



AGENDA

BOARD OF SUPERVISORS, COUNTY OF MONO STATE OF CALIFORNIA

Regular Meetings: The First, Second, and Third Tuesday of each month. Location of meeting is specified just below.

MEETING LOCATION Mammoth Lakes Suite Z, 237 Old Mammoth Rd, Suite Z, Mammoth Lakes, CA 93546

Regular Meeting November 21, 2017

TELECONFERENCE LOCATIONS:

1) First and Second Meetings of Each Month: Mammoth Lakes CAO Conference Room, 3rd Floor Sierra Center Mall, 452 Old Mammoth Road, Mammoth Lakes, California, 93546; 2) Third Meeting of Each Month: Mono County Courthouse, 278 Main, 2nd Floor Board Chambers, Bridgeport, CA 93517.

Board Members may participate from a teleconference location. Note: Members of the public may attend the open-session portion of the meeting from a teleconference location, and may address the board during any one of the opportunities provided on the agenda under Opportunity for the Public to Address the Board.

NOTE: In compliance with the Americans with Disabilities Act if you need special assistance to participate in this meeting, please contact Shannon Kendall, Clerk of the Board, at (760) 932-5533. Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting (See 42 USCS 12132, 28CFR 35.130).

Full agenda packets are available for the public to review in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). Any writing distributed less than 72 hours prior to the meeting will be available for public inspection in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). **ON THE WEB:** You can view the upcoming agenda at <http://monocounty.ca.gov>. If you would like to receive an automatic copy of this agenda by email, please subscribe to the Board of Supervisors Agendas on our website at <http://monocounty.ca.gov/bos>.

UNLESS OTHERWISE SPECIFIED BY TIME, ITEMS SCHEDULED FOR EITHER THE MORNING OR AFTERNOON SESSIONS WILL BE HEARD ACCORDING TO AVAILABLE TIME AND PRESENCE OF INTERESTED PERSONS. PUBLIC MAY COMMENT ON AGENDA ITEMS AT THE TIME THE ITEM IS HEARD.

9:00 AM Call meeting to Order

Pledge of Allegiance

1. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

on items of public interest that are within the subject matter jurisdiction of the Board.
(Speakers may be limited in speaking time dependent upon the press of business)

and number of persons wishing to address the Board.)

2. RECOGNITIONS

A. Resolution Recognizing Scott Burns for His Years of Service to Mono County

Departments: Community Development

10 minutes

(Wendy Sugimura) - Presentation of resolution recognizing Scott Burns for his years of public service.

Recommended Action: Adopt Resolution recognizing Scott Burns for his years of service.

Fiscal Impact: None.

3. COUNTY ADMINISTRATIVE OFFICE

CAO Report regarding Board Assignments

Receive brief oral report by County Administrative Officer (CAO) regarding work activities.

4. DEPARTMENT/COMMISSION REPORTS

5. CONSENT AGENDA

(All matters on the consent agenda are to be approved on one motion unless a board member requests separate action on a specific item.)

A. Performance Contract between Mono County Behavioral Health and the California Department of Health Care Services

Departments: Behavioral Health

Proposed performance contract with California Department of Health Care Services.

Recommended Action: Approve County entry into proposed contract and authorize Robin Roberts or other designated Behavioral Health Staff to execute said contract on behalf of the County. Provide any desired direction to staff.

Fiscal Impact: There is no fiscal impact to the County General Fund. The performance contract ensures continued receipt of the Department's budgeted revenues to support the delivery of Behavioral Health program services.

B. Contract with Panorama Environmental, Inc. for Environmental Analysis of Water Leases/Transfers in Walker River Basin

Departments: Community Development

Proposed contract with Panorama Environmental Inc. for an amount not to exceed

\$365,961, for California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin, Mono County.

Recommended Action: Approve County entry into proposed contract and authorize CAO Leslie Chapman to execute said contract on behalf of the County. Provide any desired direction to staff.

Fiscal Impact: No impact to the General Fund; Staff and Consultant costs are funded by the National Fish and Wildlife Foundation (NFWF) via a grant from the U.S. Bureau of Reclamation's Desert Terminal Lakes Program. The contract amount of \$365,961 was included in the General Fund's budget.

6. CORRESPONDENCE RECEIVED

All items listed are located in the Office of the Clerk of the Board, and are available for review. Direction may be given to staff regarding, and/or the Board may discuss, any item of correspondence listed on the agenda.

A. SB 190 Letter

Departments: Clerk of the Board

Letter to the Board from multiple groups including the East Bay Community Law Center regarding the implementation of S.B. 190.

B. Wildlife Conservation Board Letter

Departments: Clerk of the Board

Letter from the California Wildlife Conservation Board on behalf of the California Department of Fish and Wildlife (DFW) advising of their consideration of acceptance, on DFW's behalf, of a conservation easement on 15+ acres of land within the Town of Mammoth Lakes and 10+ acres of land near Swall Meadows (Wheeler Ridge).

7. REGULAR AGENDA - MORNING

A. PUBLIC HEARING: Mono County Housing Program Guidelines

Departments: Finance

PUBLIC HEARING 10:00 A.M. - 30 minutes (15 minute presentation; 15 minute discussion)

(Janet Dutcher) - Public hearing regarding Mono County Housing program guidelines.

Recommended Action: Adopt Resolution R17-____, Approving the Mono County First Time Homebuyer Guidelines, Owner Investor Rehabilitation Guidelines, and Occupant Rehabilitation Guidelines. Provide any desired direction to staff.

Fiscal Impact: None at this time. Potential increase in Housing program funding from Community Development Block Grant program. Also, likely increases

competitiveness of Mono County's grant application.

B. 2017/2018 CSAC Appointments

Departments: Clerk of the Board

10 minutes (Board Discussion)

Selection from the Board of Supervisors of a member and alternate to serve on the California State Association of Counties (CSAC) Board of Directors for 2017/18.

Recommended Action: Elect a member of the Board of Supervisors to serve on the CSAC Board of Directors for the 2017/18 Association year beginning on November 28, 2017; also, elect an alternate member.

Fiscal Impact: Fiscal impact limited to cost to attend meetings and conferences, estimated at \$2,700, which is included in the General Fund budget.

C. Appointments to the Economic Development, Tourism & Film Commission

Departments: Economic Development

10 minutes

(Alicia Vennos) - Appointment of Wendy Schneider and Sarah Walsh to the Mono County Economic Development, Tourism & Film Commission, to represent District 2 and 3 respectively for a four-year term.

Recommended Action: Appoint Wendy Schneider and Sarah Walsh to the Mono County Economic Development, Tourism & Film Commission, for a four-year term effective Nov. 21, 2017 to June 30, 2021.

Fiscal Impact: None.

D. Comment Letter on Proposed National Park Fee Increase, and Resolution in Support of the National Park Service Legacy Act

Departments: CAO

15 minutes

(Leslie Chapman) - Consider comment letter regarding proposed fee increase in certain National Parks, and Resolution R17-____, a Resolution of the Mono County Board of Supervisors in support of the National Park Service Legacy Act of 2017 (S751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System.

Recommended Action: Authorize Chair to sign one of the two comment letters regarding proposed fee increase in certain National Parks, and approve Resolution R17-____, a Resolution of the Mono County Board of Supervisors in support of the National Park Service Legacy Act of 2017 (S751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System.

Fiscal Impact: None.

8. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

9. CLOSED SESSION

A. Closed Session--Human Resources

CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Stacey Simon, Leslie Chapman, Dave Butters, Janet Dutcher, and Anne Larsen. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

B. Closed Session -- Exposure to Litigation

Departments: County Counsel

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code section 54956.9. Number of potential cases: one.

THE AFTERNOON SESSION WILL RECONVENE NO EARLIER THAN 1:00 P.M.

10. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

11. REGULAR AGENDA - AFTERNOON

A. PUBLIC HEARING: Request to Extend Temporary Moratorium on all Commercial Cannabis Activities in the Unincorporated Area of Mono County for One Year

Departments: Community Development

PUBLIC HEARING - 1:00 p.m. (45 minutes)

(Michael Draper) - Public hearing regarding request for approval of interim ordinance No. 17-__ of the Mono County Board of Supervisors extending the temporary moratorium prohibiting commercial medical and recreational cannabis activities, including commercial cultivation, distribution, transportation, delivery,

storage, manufacturing, processing, provision or sale of cannabis products in the unincorporated area of Mono County established by Mono County Ordinance 16-11.

Recommended Action: Conduct public hearing. Consider and potentially adopt proposed ORD17-____, Extending the temporary moratorium prohibiting commercial medical and recreational cannabis activities, including commercial cultivation, distribution, transportation, delivery, storage, manufacturing, processing, provision or sale of cannabis products in the unincorporated area of Mono County established by Mono County Ordinance 16-11. Provide any desired direction to staff.

Fiscal Impact: None at this time.

12.

BOARD MEMBER REPORTS

The Board may, if time permits, take Board Reports at any time during the meeting and not at a specific time.

ADJOURN



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Community Development

TIME REQUIRED 10 minutes

PERSONS APPEARING BEFORE THE BOARD Wendy Sugimura

SUBJECT Resolution Recognizing Scott Burns for His Years of Service to Mono County

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation of resolution recognizing Scott Burns for his years of public service.

RECOMMENDED ACTION:

Adopt Resolution recognizing Scott Burns for his years of service.

FISCAL IMPACT:

None.

CONTACT NAME: Wendy Sugimura

PHONE/EMAIL: 760-924-1814 / wsugimura@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

<p>Click to download</p> <p>No Attachments Available</p>
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History

Time	Who	Approval
11/15/2017 4:57 PM	County Administrative Office	Yes
11/15/2017 4:59 PM	County Counsel	Yes
11/16/2017 1:02 PM	Finance	Yes



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Behavioral Health

TIME REQUIRED

SUBJECT Performance Contract between Mono County Behavioral Health and the California Department of Health Care Services

PERSONS APPEARING BEFORE THE BOARD

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Proposed performance contract with California Department of Health Care Services.

RECOMMENDED ACTION:

Approve County entry into proposed contract and authorize Robin Roberts or other designated Behavioral Health Staff to execute said contract on behalf of the County. Provide any desired direction to staff.

FISCAL IMPACT:

There is no fiscal impact to the County General Fund. The performance contract ensures continued receipt of the Department's budgeted revenues to support the delivery of Behavioral Health program services.

CONTACT NAME: Robin Roberts

PHONE/EMAIL: 760-924-1740 / rroberts@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
Staff Report Performance Contract with DHCS
DHCS Performance Contract Certification
DHCS Performance Contract Exhibit A
DHCS Performance Contract Exhibit B
DHCS Performance Contract Exhibit D
DHCS Performance Contract Exhibit E

[Exhibit E Attachment](#)

[DHCS Performance Contract CCC](#)

History

Time	Who	Approval
11/16/2017 4:55 AM	County Administrative Office	Yes
11/15/2017 3:33 PM	County Counsel	Yes
11/15/2017 1:55 PM	Finance	Yes



MONO COUNTY BEHAVIORAL HEALTH DEPARTMENT

COUNTY OF MONO

P. O. BOX 2619 MAMMOTH LAKES, CA 93546 (760) 924-1740 FAX: (760) 924-1741

TO: Mono County Board of Supervisors
FROM: Robin K. Roberts, Behavioral Health Director
DATE: November 6, 2017

SUBJECT:

Approve Mono County Behavioral Health Performance Contract with California Department of Health Care Services.

DISCUSSION:

The California Department of Health Care Services (hereafter referred to as DHCS or Department) administers the Mental Health Services Act, Projects for Assistance in Transition from Homelessness (PATH) and Community Mental Health Services Grant (MHBG) programs and oversees county provision of community mental health services provided with realignment funds. Mono County Behavioral Health must meet certain conditions and requirements to receive funding for these programs and community mental health services. This Agreement, which is County's performance contract, as required by Welfare and Institutions Code (Welf. & Inst. Code) sections 5650(a), 5651, 5666, 5897, and Title 9, California Code of Regulations (Cal. Code Regs.), Title 9, section 3310, sets forth conditions and requirements that County must meet in order to receive this funding. This Agreement does not cover federal financial participation or State general funds as they relate to Medi-Cal services provided through the Mental Health Plan Contracts.

FISCAL IMPACT:

There is no fiscal impact to the County General Fund. The performance contract ensures continued receipt of the Department's budgeted revenues to support the delivery of Behavioral Health program services.

SUBMITTED BY:

Robin K. Roberts, Director of Behavioral Health, Contact: 760.924.1740

REGISTRATION NUMBER	AGREEMENT NUMBER 17-94537
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1. This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME (Also known as DHCS, CDHS, DHS or the State)

Department of Health Care Services

CONTRACTOR'S NAME (Also referred to as Contractor)
 Mono County Mental Health Services

2. The term of this Agreement is: July 1, 2017 through June 30, 2018



3. The maximum amount of this Agreement is: \$ 0
 Zero dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Program Specifications (including Special Terms and Conditions)	16 pages
Exhibit A – Attachment I – Request for Waiver	1 page
Exhibit B – Funds Provision	1 page
Exhibit C * – General Terms and Conditions	GTC 04/2017
Exhibit D – Information Confidentiality and Security Requirements	7 pages
Exhibit E – Privacy and Information Security Provisions (including Attachment A)	31 pages
Exhibit E – Attachment B – Information Security Exchange Agreement between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS)	101 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Mono County Mental Health Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Robin K. Roberts, MFT, BH Director		
ADDRESS P.O. Box 2619 Mammoth Lakes, CA 93546		
STATE OF CALIFORNIA		
AGENCY NAME Department of Health Care Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Don Rodriguez, Chief, Contract Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

Exempt per: W&I Code §14703

Exhibit A
Program Specifications

1. Service Overview

The California Department of Health Care Services (hereafter referred to as DHCS or Department) administers the Mental Health Services Act, Projects for Assistance in Transition from Homelessness (PATH) and Community Mental Health Services Grant (MHBG) programs and oversees county provision of community mental health services provided with realignment funds. Contractor (hereafter referred to as County in this Exhibit) must meet certain conditions and requirements to receive funding for these programs and community mental health services. This Agreement, which is County's performance contract, as required by Welfare and Institutions Code (Welf. & Inst. Code) sections 5650(a), 5651, 5666, 5897, and Title 9, California Code of Regulations (Cal. Code Regs.), Title 9, section 3310, sets forth conditions and requirements that County must meet in order to receive this funding. This Agreement does not cover federal financial participation or State general funds as they relate to Medi-Cal services provided through the Mental Health Plan Contracts. County agrees to comply with all of the conditions and requirements described herein.

DHCS shall monitor this Agreement to ensure compliance with applicable federal and State law and applicable regulations. (Gov. Code §§ 11180-11182; Welf. & Inst. Code §§ 5614, 5651, subd. (c), subd. (b) &, 14124.2, subd. (a).)

2. Service Location

The services shall be performed at appropriate sites as described in this contract.

3. Service Hours

The services shall be provided during times required by this contract.

4. Project Representatives

A. The project representatives during the term of this Agreement will be:

Department of Health Care Services Contract Manager: Erika Cristo Telephone: (916) 552-9055 Fax: (916) 440-7620 Email: Erika.Cristo@dhcs.ca.gov	Mono County Behavioral Health Contract Manager: Robin K. Roberts, MFT Telephone: (760) 924-1740 Fax: (760) 924-1741 Email: rroberts@mono.ca.gov
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B. Direct all inquiries to:

Exhibit A
Program Specifications

Department of Health Care Services	Mono County Behavioral Health
Mental Health Services Division/Program Policy Unit Attention: Guy Stewart 1500 Capitol Avenue, MS 2702 P.O. Box Number 997413 Sacramento, CA, 95899-7413	Attention: Robin K. Roberts, MFT P.O. Box 2619 Mammoth Lakes, CA 93546
Telephone: (916) 449-5997 Fax: (916) 440-7620 Email: Guy.Stewart@dhcs.ca.gov	Telephone: (760) 924-1740 Fax: (760) 924-1741 Email: rroberts@mono.ca.gov

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

5. General Requirements for Agreement

Welfare and Institutions Code section 5651 provides specific assurances, which are listed below, that must be included in this Agreement. County shall:

- A. Comply with the expenditure requirements of Welfare and Institutions Code Section 17608.05,
- B. Provide services to persons receiving involuntary treatment as required by Part 1 (commencing with section 5000) and Part 1.5 (commencing with section 5585) of Division 5 of the Welfare and Institution Code,
- C. Comply with all of the requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with section 5700) of the Welfare and Institutions Code, and submit cost reports and other data to DHCS in the form and manner determined by the DHCS,
- D. Ensure that the Local Mental Health Advisory Board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Welfare and Institutions Code section 5604.2,
- E. Comply with all provisions and requirements in law pertaining to patient rights,
- F. Comply with all requirements in federal law and regulation pertaining to federally funded mental health programs,
- G. Provide all data and information set forth in Sections 5610 and 5664 of the Welfare and Institutions Code,

Exhibit A
Program Specifications

- H. If the County elects to provide the services described in Chapter 2.5 (commencing with Section 5670) of Division 5 of the Welfare and Institution Code, comply with guidelines established for program initiatives outlined in this chapter, and
- I. Comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Mental Health Services Act.

6. Services Authority

County shall adhere to the program principles and, to the extent funds are available, County shall provide the array of treatment options in accordance with Welfare and Institutions Code sections 5600.4 through 5600.7, inclusive.

A. THE MENTAL HEALTH SERVICES ACT PROGRAM

1) Program Description

Proposition 63, which created the Mental Health Services Act (MHSA), was approved by the voters of California on November 2, 2004. The Mental Health Services (MHS) Fund, which provides funds to counties for the implementation of its MHSA programs, was established pursuant to Welfare and Institutions Code section 5890. The MHSA was designed to expand California's public mental health programs and services through funding received by a one percent tax on personal incomes in excess of \$1 million. Counties use this funding for projects and programs for prevention and early intervention, community services and supports, workforce development and training, innovation, plus capital facilities and technological needs through mental health projects and programs. The State Controller distributes MHS Funds to the counties to plan for and provide mental health programs and other related activities outlined in a county's three-year program and expenditure plan or annual update. MHS Funds are distributed by the State Controller's Office to the counties on a monthly basis.

DHCS shall monitor County's use of MHS Funds to ensure that the county meets the MHSA and MHS Fund requirements. (Gov. Code §§ 11180-11182; Welf. & Inst. Code §§ 5651(c), 5897(d), 14124.2(a).)

2) Issue Resolution Process

County shall have an Issue Resolution Process (Process) to handle client disputes related to the provision of their mental health services. The Process shall be completed in an expedient and appropriate manner. County shall develop a log to record issues submitted as part of the Process. The log shall contain the date the issue was received; a brief synopsis of the issue; the final issue resolution outcome; and the date the final issue resolution was reached.

3) Revenue and Expenditure Report

Exhibit A
Program Specifications

County shall submit its Revenue and Expenditure Report (RER) electronically to the Department and the Mental Health Services Oversight and Accountability Commission by December 31 following the close of the fiscal year in accordance with Welfare and Institutions Code sections 5705 and 5899, regulations and DHCS-issued guidelines. The RER shall be certified by the mental health director and the County's auditor-controller (or equivalent), using the DHCS-issued certification form. Data submitted shall be full and complete.

If County does not submit the RER by the required deadline, DHCS may withhold MHS funds until the reports are submitted or require the county to submit a corrective action plan with specific timelines. (Welf. & Inst. Code § § 5897(e) and 5899(e); Cal. Code Regs., tit. 9, § 3510(c)) If the RER does not meet the requirements outlined above, DHCS may request a plan of correction with specific timelines. (Welf. & Inst. Code § 5897(e)) If the RER does not meet the requirements, in accordance with the procedure in paragraph 9, DHCS may withhold payments from the MHS Fund until the County submits a complete RER. (Welf. & Inst. Code §§ 5655, Cal. Code Regs., tit. 9 § 3510(c).)

- 4) Distribution and Use of Local Mental Health Services Funds:
- a. Welfare and Institutions Code section 5891(c) provides that commencing July 1, 2012, on or before the 15th day of each month, pursuant to a methodology provided by DHCS, the State Controller shall distribute to County's Local Mental Health Services Fund (MHS Fund) (established by County pursuant to Welfare & Institutions Code section 5892, subd. (f)) all unexpended and unreserved funds on deposit as of the last day of the prior month in the Mental Health Services Fund for the provision of specified programs and other related activities.
 - b. County shall allocate the monthly Local MHS Fund in accordance with Welfare and Institutions Code section 5892 as follows:
 - i. Twenty percent of the funds shall be used for prevention and early intervention (PEI) programs in accordance with Welfare and Institutions Code section 5840. The expenditure for PEI may be increased by County if DHCS determines that the increase will decrease the need and cost for additional services to severely mentally ill persons in County by an amount at least commensurate with the proposed increase.
 - ii. The balance of funds shall be distributed to County's mental health programs for services to persons with severe mental illnesses pursuant to Part 4 of Division 5 of the Welfare and Institutions Code, (commencing with Section 5850), for the children's system of care and Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), for the adult and older adult system of care.
 - iii. Five percent of the total funding for the County's mental health programs established pursuant to Part 3 of Division 5 of the Welfare and Institutions

Exhibit A
Program Specifications

Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850) shall be utilized for innovative programs in accordance with Welfare and Institutions Code sections 5830, 5847 and 5848.

- iv. Programs for services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850) may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for these purposes shall not exceed 20 percent of the average amount of funds allocated to County for the previous five years.
 - v. Allocations in Subparagraphs i. through iii. above, include funding for annual planning costs pursuant to Welfare and Institutions Code section 5848. The total of these costs shall not exceed five percent of the total annual revenues received for the Local MHS Fund. The planning costs shall include moneys for County's mental health programs to pay for the costs of having consumers, family members, and other stakeholders participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services.
 - c. County shall use Local MHS Fund monies to pay for those portions of the mental health programs/services for children and adults for which there is no other source of funds available. (Welf. & Inst. Code §§ 5813.5, subd. (b), 5878.3 subd. (a); Cal. Code Regs., tit. 9 § 3610, subd. (d).)
 - d. County shall only use Local MHS Funds to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. These funds shall only be used to pay for the programs authorized in Welfare and Institutions Code section 5892. These funds may not be used to pay for any other program and may not be loaned to County's general fund or any other County fund for any purpose. (Welf. & Inst. Code § 5891, subd. (a).)
 - e. All expenditures for County mental health programs shall be consistent with a currently approved three-year program and expenditure plan or annual update pursuant to Welfare and Institutions Code section 5847. (Welf. & Inst. Code § 5892, subd. (g).)
- 5) Three-Year Program and Expenditure Plan and Annual Updates:
- a. County shall prepare and submit a three-year program and expenditure plan, and annual updates, adopted by County's Board of Supervisors, to the Mental Health Services Oversight and Accountability Commission (MHSOAC) and DHCS within 30 calendar days after adoption. (Welf. & Inst. Code, § 5847 subd. (a).) The three-year program and expenditure plan and annual updates shall include all of the following:

Exhibit A
Program Specifications

- i. A program for Prevention and Early Intervention (PEI) in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840). (Welf. & Inst. Code, § 5847, subd. (b)(1).)
- ii. A program for services to children in accordance with Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), to include a wraparound program pursuant to Chapter 4 of Part 6 of Division 9 of the Welfare and Institutions Code (commencing with Section 18250), or provide substantial evidence that it is not feasible to establish a wraparound program in the County. (Welf. & Inst. Code § 5847, subd. (b)(2).)
- iii. A program for services to adults and seniors in accordance with Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800). (Welf. & Inst. Code § 5847, subd. (b)(3).)
- iv. A program for innovations in accordance with Part 3.2 of Division 5 of the Welfare and Institutions Code (commencing with Section 5830). (Welf. & Inst. Code § 5847, subd. (b)(4).) Counties shall expend funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission. (Welf. & Inst. Code, § 5830, subd. (e).)
- v. A program for technological needs and capital facilities needed to provide services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850). All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting. (Welf. & Inst. Code, § 5847, subd. (b)(5).)
- vi. Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 of Division 5 of the Welfare and Institutions Code (commencing with Section 5820) and California Code of Regulations, Title 9, section 3830, subdivision(b). (Welf. & Inst. Code § 5847, subd. (b)(6).)
- vii. Establishment and maintenance of a prudent reserve to ensure the County program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), during years in which revenues for the MHS Fund are below recent

Exhibit A
Program Specifications

averages adjusted by changes in the state population and the California Consumer Price Index. (Welf. & Inst. Code, § 5847, subd. (b)(7).)

viii. Certification by County's mental health director, which ensures that County has complied with all pertinent regulations, laws, and statutes of the MHSA, including stakeholder participation and non-supplantation requirements. (Welf. & Inst. Code, § 5847, subd. (b)(8).)

ix. Certification by County's Mental Health Director and County's Auditor-Controller that the County has complied with any fiscal accountability requirements as directed by DHCS, and that all expenditures are consistent with the requirements of the MHSA pursuant to California Code of Regulations, Title 9, sections 3500 and 3505. (Welf. & Inst. Code, § 5847, subd. (b)(9).)

- b. County shall include services in the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, to address the needs of transition age youth between the ages of 16 and 25 years old, including the needs of transition age foster youth. (Welf. & Inst. Code, § 5847, subd. (c).)
- c. County shall prepare expenditure plans for the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, and annual expenditure updates. Each expenditure plan update shall indicate the number of children, adults, and seniors to be served, and the cost per person. The expenditure update shall include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose. (Welf. & Inst. Code, § 5847, subd. (e).)
- d. County's three-year program and expenditure plan and annual updates shall include reports on the achievement of performance outcomes for services provided pursuant to the Adult and Older Adult Mental Health System of Care Act, Prevention and Early Intervention, and the Children's Mental Health Services Act, which are funded by the MHS Fund and established jointly by DHCS and the MHSOAC, in collaboration with the California Mental Health Director's Association (Welf. & Inst. Code, § 5848, subd. (c).) County contracts with providers shall include the performance goals from the County's three-year program and expenditure plan and annual updates that apply to each provider's programs and services
- e. County's three-year program and expenditure plan and annual update shall consider ways to provide services to adults and older adults that are similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons. (Welf. & Inst. Code, § 5813.5, subd. (f).)

6) Planning Requirements and Stakeholder Involvement:

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- a. County shall develop its three-year program and expenditure plan and annual update with local stakeholders, including adults and seniors with severe mental illness, families of children, adults, and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies, veterans, representatives from veterans organizations, providers of alcohol and drug services, health care organizations, and other important interests. Counties shall demonstrate a partnership with constituents and stakeholders throughout the process that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations. County shall prepare and circulate a draft plan and update for review and comment for at least 30 calendar days to representatives of stakeholder interests and any interested party who has requested a copy of the draft plans. (Welf. & Inst. Code, § 5848, subd. (a); Cal. Code Regs., tit. 9, §§ 3300, 3310, 3315 & 3320.)
- b. County's mental health board, established pursuant to Welfare and Institutions Code, section 5604, shall conduct a public hearing on the County's draft three-year program and expenditure plan and annual updates at the close of the 30 calendar day comment period. Each adopted three-year program and expenditure plan or annual update shall summarize and analyze substantive recommendations and describe substantive changes to the three-year program and expenditure plan and annual updates. The County's mental health board shall review the adopted three-year program and expenditure plan and annual updates and recommend revisions to the County's mental health department. (Welf. & Inst. Code, § 5848, subd. (b); Cal. Code Regs., tit. 9, § 3315.)
- c. The County shall provide for a Community Planning Process as the basis for developing the Three-Year Program and Expenditure Plans and updates. The County shall designate positions and or units responsible for: the overall Community Program Planning Process; coordination and management of the Community Program Planning Process; ensuring stakeholders have the opportunity to participate; ensuring that stakeholders reflect the diversity of the demographics of the County; providing outreach to clients and their family members. The Community Program Planning process shall, at a minimum, include: involvement of clients and their family members in all aspects of the Process; participation of stakeholders; training, as needed, to County staff and stakeholders, clients, and family members regarding the stakeholder process. (Cal. Code Regs., tit. 9, § 3300.)
- d. The County shall adopt the following standards in planning, implementing, and evaluating the programs and/or services provided with MHSA funds; community collaboration, as defined in California Code of Regulations, Title 9, section 3200.060; cultural competence, as defined in section 3200.100; client driven, as defined in section 3200.050; family driven, as defined in section 3200.120; wellness, recovery and resilience focused; and integrated service experiences for clients and their families, as defined in section 3200.190. The planning, implementation and evaluation process includes, but is not limited to, the

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Community Program Planning Process; development of the Three-Year Program and Expenditure Plans and updates; and the manner in which the County delivers services and evaluates service delivery. (Cal. Code Regs., tit. 9, § 3320)

7) County Requirements for Handling MHSA Funds

- a. County shall place all funds received from the State MHS Fund into a Local MHS Fund. The Local MHS Fund balance shall be invested consistent with other County funds and the interest earned on the investments shall be transferred into the Local MHS Fund. (Welf. & Inst. Code, § 5892, subd. (f).)
- b. The earnings on investment of these funds shall be available for distribution from the fund in future years. (Welf. & Inst. Code, § 5892, subd. (f).)
- c. Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to County which it has not spent for the authorized purpose within the three years shall revert to the State. County may retain MSHA Funds for capital facilities, technological needs, or education and training for up to 10 years before reverting to the State. (Welf. & Inst. Code, § 5892, subd. (h).)
- d. When accounting for all receipts and expenditures of MHSA funds, County must adhere to uniform accounting standards and procedures that conform to the Generally Accepted Accounting Principles (GAAP), as prescribed by the State Controller in California Code of Regulations, Title 2, division 2, chapter 2, subchapter 1, Accounting Procedures for Counties, sections 901-949, and a manual, which is currently entitled "Accounting Standards and Procedures for Counties" and available at http://www.sco.ca.gov/pubs_guides.html. (Gov. Code, §30200.)

8) Department Compliance Investigations:

DHCS may investigate County's performance of the Mental Health Services Act related provisions of this Agreement and compliance with the provisions of the Mental Health Services Act, and relevant regulations. In conducting such an investigation DHCS may inspect and copy books, records, papers, accounts, documents and any writing as defined by Evidence Code Section 250 that is pertinent or material to the investigation of the County. For purposes of this Paragraph "provider" means any person or entity that provides services, goods, supplies or merchandise, which are directly or indirectly funded pursuant to MHSA. (Gov. Code §§ 11180, 11181, 11182; Welf. & Inst. Code §§ 5651, subd. (a)(9), 5897(d) 14124.2.)

9) County Breach, Plan of Correction and Withholding of State Mental Health Funds:

- a. If DHCS determines that County is out-of-compliance with the Mental Health Services Act related provisions of this Agreement, DHCS may request that

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County submit a plan of correction, including a specific timeline to correct the deficiencies, to DHCS. (Welf. & Inst. Code § 5897(d).)

- b. In accordance with Welfare and Institutions Code section 5655, if DHCS considers County to be substantially out-of-compliance with any provision of the Mental Health Services Act or relevant regulations, including all reporting requirements, the director shall order County to appear at a hearing before the Director or the Director's designee to show cause why the Department should not take administrative action. County shall be given at least twenty (20) days notice before the hearing.
 - c. If the Director determines that there is or has been a failure, in a substantial manner, on the part of County to comply with any provision of the Welfare and Institutions Code or its implementing regulations, and that administrative sanctions are necessary, the Department may invoke any, or any combination of, the following sanctions Welfare and Institutions Code Section 5655:
 - 1) Withhold part or all state mental health funds from County.
 - 2) Require County to enter into negotiations with DHCS to agree on a plan for County to address County's non-compliance.
 - 3) Bring an action in mandamus or any other action in court as may be appropriate to compel compliance. Any action filed in accordance with the section shall be entitled to a preference in setting a date for hearing.
- B. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS (PATH) PROGRAM (42, U.S.C. §§, 290cc-21 -290cc-35, inclusive)**

Pursuant to Title 42 of the United States Code, sections 290cc-21 through 290cc-35, inclusive, the State of California has been awarded federal homeless funds through the federal McKinney Projects for Assistance in Transition from Homelessness (PATH) formula grant. The PATH grant funds community based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.

County shall submit its Request for Application (RFA) responses and required documentation specified in DHCS' RFA to receive PATH funds. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:
<http://www.dhcs.ca.gov/services/MH/Pages/PATH.aspx>.

If County applied for and DHCS approved its request to receive PATH grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses.

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C. COMMUNITY MENTAL HEALTH SERVICES GRANT (MHBG) PROGRAM (42, U.S.C. § 300x-1 et seq.)

Pursuant to Title 42, United States Code section 300x-1 et seq., the State of California has been awarded the federal Community Mental Health Services Block Grant funds (known as Mental Health Block Grant (MHBG)). County mental health agencies utilize MHBG funding to provide a broad array of mental health services within their mental health system of care (SOC) programs. These programs provide services to the following target populations: children and youth with serious emotional disturbances (SED) and adults and older adults with serious mental illnesses (SMI).

County shall submit its RFA responses and required documentation specified in DHCS' RFA to receive MHBG funding. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/MHBG.aspx>.

If County applied for and DHCS approved its request to receive MHBG grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses.

7. Data Information and Submission Requirements

County shall comply with all data and information submission requirements specified in this Agreement

- A. County shall provide all applicable data and information required by federal and/or State law in order to receive any funds to pay for its MHSA programs, PATH grant (if the County receives funds from this grant), MHBG grant (if the County receives funds from this grant), or county provision of community mental health services provided with 1991 realignment funds (other than Medi-Cal). These federal and State laws include, Title 42 of the United States Code, sections 290cc-21 through 290cc-35 and 300x through 300x-9, inclusive, Welfare & Institutions Code sections 5610 and 5664 and the regulations that implement, interpret or make specific, these federal and State laws and any DHCS-issued guidelines that relate to the programs or services.
- B. County shall comply with DHCS reporting requirements related to the County's receipt of federal or State funding for mental health programs. County shall submit complete and accurate information to DHCS, and as applicable the Mental Health Services Oversight and Accountability Commission, including, but not limited, to the following:

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- 1) Client and Service Information (CSI) System Data, as specified in Title 9 of the California Code of Regulations, section 3530.10 (See subparagraph c of this paragraph)
 - ii. MHSA Quarterly Progress Reports, as specified in the California Code of Regulations. Title 9, section 3530.20. MHSA Quarterly Progress Reports provide the actual number of clients served by MHSA-funded program. Reports are submitted on a quarterly basis.
 - iii. Full Service Partnership Performance Outcome data, as specified in the California Code of Regulations, Title 9, section 3530.30.
 - iv. Consumer Perception Survey data, as specified in the California Code of Regulations, Title 9, section 3530.40.
 - v. The Annual Mental Health Services Act Revenue and Expenditure Report, as specified in Welfare and Institutions Code section 5899(a) and the California Code of Regulations, Title 9, sections 3510, 3510.010, and 3510.020 and DHCS-issued guidelines.
 - vi. Innovative Project Reports (annual, final and supplements), as specified in the California Code of Regulations, Title 9, sections 3580 through 3580.02.
 - vii. The Annual Prevention and Early Intervention report, as specified in the California Code of Regulations, Title 9, sections 3560 and 3560.010.
 - viii. Three Year Program and Evaluation Reports, as specified in the California Code of Regulations, Title 9, sections 3560 and 3560.020.
- C. County shall submit CSI data to DHCS, in accordance with Title 9 of the California Code of Regulations, section 3530.10, and according to the specifications set for in DHCS' CSI Data Dictionary, County shall:
- i. Report monthly CSI data to DHCS within 60 calendar days after the end of the month in which services were provided.
 - ii. Report within 60 calendar days or be in compliance with an approved plan of correction to the DHCS's CSI Unit.
 - iii. Make diligent efforts to minimize errors on the CSI error file.
 - iv. Notify DHCS 90 calendar days prior to any change in reporting system and/or change of automated system vendor.
- a. In the event that DHCS or County determines that, due to federal or state law changes or business requirements, an amendment is needed of either County's or DHCS' obligations under this contract relating to either DHCS' or County's

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information needs both DHCS and County agree to provide notice to the other party as soon as practicable prior to implementation. This notice shall include information and comments regarding the anticipated requirements and impacts of the projected changes. DHCS and County agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.

- b. For all mental health funding sources received by County that require submission of a cost report, County shall submit a fiscal year-end cost report by December 31 following the close of the fiscal year in accordance with applicable federal and State law, regulations and DHCS-issued guidelines. (Welf. & Inst. Code § 5705; Cal. Code Regs., tit. 9, §§ 3500, 3505.) The cost report shall be certified as true and correct, and with respect to Mental Health Service Fund moneys, that the County is in compliance with the California Code of Regulations, Title 9, section 3410, Non-Supplant. The certification must be completed by the mental health director and one of the following: the County mental health departments chief financial officer (or equivalent), and individual who has delegated authority to sign for, and reports directly to the county mental health department's chief financial officer (or equivalent), or the county's auditor-controller (or equivalent). Data submitted shall be full and complete. The County shall also submit a reconciled cost report certified by the mental health director and the county's auditor-controller as being true and correct no later than 18 months after the close of the following fiscal year.
- c. If applicable to a specific federal or state funding source covered by this Agreement, County shall require each of its subcontractors to submit a fiscal year-end cost report to DHCS no later than December 31 following the close of the fiscal year, in accordance with applicable federal and state laws, regulations, and DHCS-issued guidelines.

8. Special Terms and Conditions

A. Audit and Record Retention

(Applicable to agreements in excess of \$10,000)

- 1) County and/or Subcontractor(s) shall maintain records, including books,, documents, and other evidence, accounting procedures and practices, sufficient to properly support all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The forgoing constitutes "records" for the purpose of this provision.
- 2) County's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

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- 3) County agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. County agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, County agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.
 - 4) County and/or Subcontractor(s) shall preserve and make available his/her records (1) for a period of ten years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (a) or (b) below.
 - a. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - b. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the ten-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.
 - 5) County and/or Subcontractor(s) may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books, and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, County and/or Subcontractor(s) must supply or make available applicable devices, hardware, and/or software necessary to view, copy, and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
 - 6) County shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in 2 Code of Regulations part 200.
- B. Dispute Resolution Process for Projects for Assistance in Transition from Homelessness Program Grant and Community Mental Health Services Grant Program**

If a dispute arises between the Contractor and DHCS regarding Contractor compliance with Section 6, of this Agreement, subsection B, Projects for Assistance in Transition from Homelessness Program or subsection C, Community Mental Health Services Grant Program, the Contractor must seek resolution using the process outlined below.

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- 1) The Contractor must first informally discuss the problem with the DHCS Project Representative listed in paragraph 3. If the parties are unable to resolve the problem informally, the Contractor must mail a written Statement of Dispute, with supporting evidence, to DHCS at the address listed in paragraph 3 below. The Statement of Dispute must describe the issues in dispute, the legal authority or other basis for the Contractor's position, and the remedy sought.
- 2) The Branch Chief of DHCS' Mental Health Management and Outcomes Reporting Branch will decide the dispute and mail a written decision to the Contractor within twenty (20) working days of receiving the Statement of Dispute from the Contractor. The decision will be in writing, resolve the dispute and include a statement of the reasons for the decision that addresses each issue raised by the Contractor. If applicable, the decision will also indicate any action Contractor must take to comply with the decision. The Branch Chief's decision shall be the final administrative determination of DHCS.
- 3) Unless otherwise agreed to in writing by DHCS, the Statement of Dispute, supporting documentation, and all correspondence and documents related to the dispute resolution process shall be directed to the following:

Department of Health Care Services
Mental Health Services Division/Program Policy Unit
Attention: Guy Stewart
1500 Capitol Avenue, MS 2702
P.O. Box Number 997413
Sacramento, CA, 95899-7413

C. Novation

If County proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with County, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

D. Laura's Law

If County chooses to participate in the Assisted Outpatient Treatment program (AOT) Demonstration Project Act of 2002 it shall be required to comply with all applicable statutes including, but not limited to, Welfare and Institutions Code sections 5345 through 5349.5, inclusive. In addition, County shall submit to DHCS any documents that DHCS requests as part of its statutory responsibilities in accordance with DMH Letter No.: 03-01 dated March 20, 2003.

E. Welfare and Institutions Code section 5751.7 Waiver

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- 1) County shall comply with Welfare and Institutions Code section 5751.7 and ensure that minors are not admitted into inpatient psychiatric treatment with adults. If this requirement creates undue hardship to County due to inadequate or unavailable alternative resources, County may request a waiver of this requirement. County shall submit the waiver request on Attachment I of this Agreement, to DHCS.
- 2) DHCS shall review County's waiver request and provide a written notice of approval or denial of the waiver. If County's waiver request is denied, County shall prohibit health facilities from admitting minors into psychiatric treatment with adults.
- 3) County shall submit, the waiver request to DHCS at the time County submits this Agreement, signed by County, to DHCS for execution. County shall complete Attachment I, and attach it to this Agreement. See Exhibit A, Attachment I, entitled "Request For Waiver" of this Agreement for additional submission information.
Execution of this Agreement by DHCS shall not constitute approval of a waiver submitted pursuant to this section.
Any waiver granted in the prior fiscal year's Agreement shall be deemed to continue until either party chooses to discontinue it, as specified in Exhibit A, Attachment I. Execution of this Agreement shall continue independently of the waiver review and approval process.
- 4) In unusual or emergency circumstances, when County needs to request waivers after the annual Performance Contract has been executed, these requests should be sent immediately to: Licensing and Certification Section, Program Oversight and Compliance Branch, California Department of Health Care Services, P.O. Box 997413, MS 2800, Sacramento, CA 95899-7413, telephone: (916) 323-1864.
- 5) Each admission of a minor to a facility that has an approved waiver shall be reported to the Local Mental Health Director.

F. Americans with Disabilities Act

Contractor agrees to ensure that deliverables developed and produced, pursuant to this Agreement shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973 as amended (29 U.S.C. § 794 (d)), and regulations implementing that Act as set forth in Part 1194 of Title 36 of the Code of Federal Regulations. In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code section 11135 codifies section 508 of the Act requiring accessibility of electronic and information technology.

Exhibit A, Attachment I
Request for Waiver

Request for Waiver Pursuant To Section 5751.7 of the Welfare and Institutions Code

_____ hereby requests a waiver for the following public or private health facilities pursuant to section 5751.7 of the Welfare and Institutions Code for the term of this contract. These are facilities where minors may be provided psychiatric treatment with nonspecific separate housing arrangements, treatment staff, and treatment programs designed to serve minors. However, no minor shall be admitted for psychiatric treatment into the same treatment ward as an adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of others.

The request for waiver must include, as an attachment, the following:

1. A description of the hardship to the County/City due to inadequate or unavailable alternative resources that would be caused by compliance with the state policy regarding the provision of psychiatric treatment to minors.
2. The specific treatment protocols and administrative procedures established by the County/City for identifying and providing appropriate treatment to minors admitted with adults.
3. Name, address, and telephone number of the facility
 - Number of the facility's beds designated for involuntary treatment
 - Type of facility, license(s), and certification(s) held (including licensing and certifying agency and license and certificate number)
 - A copy of the facility's current license or certificate and description of the program, including target population and age groups to be admitted to the designated facility.
4. If applicable, the County Board of Supervisors' decision to designate a facility as a facility for evaluation and treatment pursuant to Welfare and Institutions Code sections 5150, 5585.50, and 5585.55.

To rescind the a waiver, either party shall send a letter to the other party on official letterhead signed by their respective Behavioral Health Director or his or her designee indicating that the party no longer grants or requests a waiver. If not otherwise specified by the party in the letter to the respective party, the discontinuance shall be effective the date the letter to the party is postmarked and the facility shall no longer be waived as of this date.

When the Department denies or rescinds a waiver issued to a County, the facility and the County Behavioral Health Director or designee shall receive written notification from the Department, by certified mail or e-mail. The notice shall include the decision, the basis for the decision, and any supporting documentation.

Exhibit B
Funds Provision

1. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, DHCS shall have no liability to pay any funds whatsoever to Mono County Behavioral Health or to furnish any other considerations under this Agreement and Mono County Behavioral Health shall not be obligated to perform any provisions of this Agreement.

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to Mono County Behavioral Health to reflect the reduced amount.

Exhibit D
Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
 - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

Exhibit D
Information Confidentiality and Security Requirements

6. The Contractor shall observe the following requirements:

A. Safeguards. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

1) Personnel Controls

- a. Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. Confidentiality Statement.** All persons that will be working with DHCS PSCI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PSCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. Background Check.** Before a member of the workforce may access DHCS PSCI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

2) Technical Security Controls

- a. Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PSCI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. Server Security.** Servers containing unencrypted DHCS PSCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

Exhibit D
Information Confidentiality and Security Requirements

- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PSCI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PSCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PSCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PSCI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PSCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PSCI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PSCI cannot be retrieved.
- i. **System Timeout.** The system providing access to DHCS PSCI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PSCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PSCI, or which alters DHCS PSCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PSCI is

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stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- I. Access Controls.** The system providing access to DHCS PSCI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption.** All data transmissions of DHCS PSCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PSCI can be encrypted. This requirement pertains to any type of PSCI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PSCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3) Audit Controls

- a. System Security Review.** All systems processing and/or storing DHCS PSCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. Log Reviews.** All systems processing and/or storing DHCS PSCI must have a routine procedure in place to review system logs for unauthorized access.
- c. Change Control.** All systems processing and/or storing DHCS PSCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4) Business Continuity / Disaster Recovery Controls

- a. Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PSCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. Data Backup Plan.** Contractor must have established documented procedures to backup DHCS PSCI to maintain retrievable exact copies of DHCS PSCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PSCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

5) Paper Document Controls

- a. Supervision of Data.** DHCS PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information.

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Information Confidentiality and Security Requirements

DHCS PSCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

- b. Escorting Visitors.** Visitors to areas where DHCS PSCI is contained shall be escorted and DHCS PSCI shall be kept out of sight while visitors are in the area.
 - c. Confidential Destruction.** DHCS PSCI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. Removal of Data.** DHCS PSCI must not be removed from the premises of the Contractor except with express written permission of DHCS.
 - e. Faxing.** Faxes containing DHCS PSCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
 - f. Mailing.** Mailings of DHCS PSCI shall be sealed and secured from damage or inappropriate viewing of PSCI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PSCI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.
- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.

Discovery and Notification of Breach. Notice to DHCS:

- (1) To notify DHCS **immediately** upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. This notification will be **by telephone call plus email or fax** upon the discovery of the breach. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of unsecured PSCI in electronic media or in any other media if the PSCI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by the contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of the contractor..

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

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Information Confidentiality and Security Requirements

- C. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI, the Contractor shall take:
 - 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

- D. **Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI. If the initial report did not include all of the requested information marked with an asterisk, then within seventy-two (72) hours of the discovery, The Contractor shall submit an updated “DHCS Privacy Incident Report” containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

- E. **Written Report.** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer, if all of the required information was not included in the DHCS Privacy Incident Report, within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

- F. **Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.

- 7. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

- 8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
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Exhibit D
Information Confidentiality and Security Requirements

See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874
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9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.

EXHIBIT E

PRIVACY AND INFORMATION SECURITY PROVISIONS

This Exhibit E is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit E consists of: (1) Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code Section 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit E consists of the following parts:

1. Exhibit E-1, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
2. Exhibit E-2, which provides for the privacy and security of PI in accordance with specified provisions of the Agreement between the Department and the Social Security Administration, known as the Information Exchange Agreement (IEA) and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit E-2 further provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
3. Exhibit E-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit E in its entirety.

EXHIBIT E-1**HIPAA Business Associate Addendum****1. Recitals.**

- A. A business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 C.F.R. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit E-1 of this Agreement. This information is hereafter referred to as "Department PHI".
- C. The purpose of this Exhibit E-1 is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH

Act. To the extent that data is both PHI or ePHI and Personally Identifying Information, both Exhibit E-2 (including Attachment B, the SSA Agreement between SSA, CHHS and DHCS, referred to in Exhibit E-2) and this Exhibit E-1 shall apply.

- D. The terms used in this Exhibit E-1, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

2. Definitions.

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Department PHI shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services on behalf of the Department as specified in Section 1.A. of Exhibit E-1 of this Agreement. The terms PHI as used in this document shall mean Department PHI.
- E. Electronic Health Records shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.
- F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual

or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.

- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- I. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- J. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit E-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

3. Terms of Agreement.

A. **Permitted Uses and Disclosures of Department PHI by Contractor.**

Except as otherwise indicated in this Exhibit E-1, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit E-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit E-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed, in accordance with section D(7) of this Exhibit E-1, that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department

C. **Prohibited Uses and Disclosures**

- 1) Contractor shall not disclose Department PHI about an individual to a health plan for payment or health care operations purposes if the Department PHI pertains solely to a health care item or service for

which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).

- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI.

D. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.
- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this

Agreement; and

- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit E.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit E of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
 - a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit E, and that require compliance with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI. As required by HIPAA, the HITECH Act and the HIPAA regulations, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit E-1 into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.
 - b. In accordance with 45 CFR Section 164.504(e)(1)(ii), upon

Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:

- i) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
- ii) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

8) **Availability of Information to the Department and Individuals to Provide Access and Information:**

- a. To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- b. If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e) and the HIPAA regulations.

- 9) **Amendment of Department PHI.** To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526, in the time and manner designated by the Department, with the Contractor being given a minimum of twenty (20) days within which to make the amendment.
- 10) **Internal Practices.** To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.
- 11) **Documentation of Disclosures.** To document and make available to the Department or (at the direction of the Department) to an individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- 12) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
 - a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours (one hour if SSA data) by email or fax** of

the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this Exhibit E-1, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916.445.4646, 866-866-0602) or by emailing privacyofficer@dhcs.ca.gov). Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI, Contractor shall take:

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- b. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the

form, to the extent known at that time, to the Information Protection Unit.

- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary (after obtaining prior written approval of DHCS). If a breach of unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California,

Privacy Enforcement Section. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.

- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. The Department Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.

- f. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

Department Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
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<p>See the Exhibit A, Scope of Work for Program Contract Manager information</p>	<p>Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646; (866) 866-0602</p> <p>Email: privacyofficer@dhcs.ca.gov</p> <p>Fax: (916) 440-7680</p>	<p>Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413</p> <p>Email: iso@dhcs.ca.gov</p> <p>Telephone: ITSD Service Desk (916) 440-7000; (800) 579-0874</p> <p>Fax: (916)440-5537</p>
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13) **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit E-1, it shall take the following steps:

- a. Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor; or
- b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit E-1 and cure is not possible.

14) **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

E. Obligations of the Department.

The Department agrees to:

- 1) **Permission by Individuals for Use and Disclosure of PHI.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose Department PHI, if such changes affect the Contractor’s permitted or required uses and disclosures.
- 2) **Notification of Restrictions.** Notify the Contractor of any restriction to

the use or disclosure of Department PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.

- 3) **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.
- 4) **Notice of Privacy Practices.** Provide Contractor with the web link to the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Visit the DHCS website to view the most current Notice of Privacy Practices at:
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/NoticeofPrivacyPractices.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

F. Audits, Inspection and Enforcement

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit E-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

G. Termination.

- 1) **Term.** The Term of this Exhibit E-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(J).
- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department's knowledge of a material breach or violation of this Exhibit E-1 by Contractor, the Department shall:
 - a. Provide an opportunity for Contractor to cure the breach or

end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or

- b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit E-1 and cure is not possible.

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EXHIBIT E-2**Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA****1. Recitals.**

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
- 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.),
 - 2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA is attached to this Exhibit E as Attachment B and is hereby incorporated in this Agreement.
 - 3) Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit E-2 is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit E-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit E-1 and this Exhibit E-2 shall apply.
- C. The IEA Agreement referenced in A.2) above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: E. Security Procedures, F. Contractor/Agent Responsibilities, and G. Safeguarding and Reporting Responsibilities for Personally Identifiable Information ("PII"), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local

Agencies Exchanging Electronic Information with the Social Security Administration. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

- D. The terms used in this Exhibit E-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

2. Definitions.

- A. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code section 1798.29(f).
- C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).
- D. "Department PI" shall mean Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department.
- E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).
- F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29 whose unauthorized access may trigger notification requirements under Civil Code section 1798.29. For purposes of this provision, identity shall include, but not be limited to, name, address, email address, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.
- G. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

- H. “Personal Information” (PI) shall have the meaning given to such term in California Civil Code Section 1798.3(a).
- I. “Required by law” means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- J. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

3. Terms of Agreement

A. Permitted Uses and Disclosures of Department PI and PII by Contractor

Except as otherwise indicated in this Exhibit E-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

B. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.
- 2) **Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or

integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of section 3, Security, below. Contractor will provide DHCS with its current policies upon request.

- 3) Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
 - b. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - c. If the data obtained by Contractor from DHCS includes PII, Contractor shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. Contractor also agrees to ensure that any agents, including a subcontractor to whom it provides DHCS PII, agree to the same requirements for privacy and security safeguards for confidential data that apply to Contractor with respect to such information.

- 4) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PI or PII by Contractor or its subcontractors in violation of this Exhibit E-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit E-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
 - a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired

by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department **within one (1) hour by email or fax** if the data is data subject to the SSA Agreement; and **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit E-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

- b.** Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS “Privacy Incident Report” form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select “Privacy” in the left column and then “Business Partner” near the middle of the page) or use this link:
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> .
- c.** Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:

 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- d. Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of

PHI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Information Security Officer.

- e. Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- f. Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, section 1798.29 and as may be required under the IEA. Contractor shall bear all costs of required notifications to individuals as well as any costs associated with the breach. The Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.

- g. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.

- h. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

Department Program Contract	DHCS Privacy Officer	DHCS Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646 Email: privacyofficer@dhcs.ca.gov Telephone:(916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874

10) Designation of Individual Responsible for Security

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit E-2 and for communicating on security matters with the Department.

EXHIBIT E-3**Miscellaneous Terms and Conditions****Applicable to Exhibit E**

- 1) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit E, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI, PI and PII.

- 2) **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit E may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit E embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
 - a) Contractor does not promptly enter into negotiations to amend this Exhibit E when requested by the Department pursuant to this section; or
 - b) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- 3) **Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of the

- violation in deciding whether or not to terminate the Agreement.
- 4) **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
 - 5) **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit E is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
 - 6) **Interpretation.** The terms and conditions in this Exhibit E shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit E shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and federal laws.
 - 7) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
 - 8) **Regulatory References.** A reference in the terms and conditions of this Exhibit E to a section in the HIPAA regulations means the section as in effect or as amended.
 - 9) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit E-1, and Section 3, Item B of Exhibit E-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.
 - 10) **No Waiver of Obligations.** No change, waiver or discharge of any

liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

- 11) Audits, Inspection and Enforcement.** From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit E. Contractor shall promptly remedy any violation of any provision of this Exhibit E. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit E. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Contractor does not constitute acceptance of such practice or a waiver of the Department's enforcement rights under this Agreement, including this Exhibit E.
- 12) Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit E and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit E.
- 13) Term.** The Term of this Exhibit E-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A.
- 14) Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of this Exhibit E to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

Attachment A
Data Security Requirements

1. Personnel Controls

- A. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
- B. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. **Confidentiality Statement.** All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six (6) years following termination of this Agreement.
- D. **Background Check.** Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

- A. **Workstation/Laptop encryption.** All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as

Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.

- B. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)

- 2) Lower case letters (a-z)
 - 3) Arabic numerals (0-9)
 - 4) Non-alphanumeric characters (punctuation symbols)
- H. **Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.
- I. **System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. **Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. **Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. **Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via

the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. **Audit Controls**

- A. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. **Business Continuity / Disaster Recovery Controls**

- A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

5. **Paper Document Controls**

- A. **Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in

paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

- B. **Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
- E. **Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. **Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.

**INFORMATION EXCHANGE AGREEMENT
BETWEEN
THE SOCIAL SECURITY ADMINISTRATION (SSA)
AND
THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES**

- A. PURPOSE:** The purpose of this Information Exchange Agreement (“IEA”) is to establish terms, conditions, and safeguards under which SSA will disclose to the State Agency certain information, records, or data (herein “data”) to assist the State Agency in administering certain federally funded, state-administered benefit programs (including state-funded, state supplementary payment programs under Title XVI of the Social Security Act) identified in this IEA. By entering into this IEA, the State Agency agrees to comply with:
- the terms and conditions set forth in the Computer Matching and Privacy Protection Act Agreement (“CMPPA Agreement”) attached as **Attachment 1**, governing the State Agency’s use of the data disclosed from SSA’s Privacy Act System of Records; and
 - all other terms and conditions set forth in this IEA and Attachments 2 through 6.
- B. PROGRAMS AND DATA EXCHANGE SYSTEMS:** (1) The State Agency will use the data received or accessed from SSA under this IEA for the purpose of administering the federally funded, state-administered programs identified in **Table 1** below. In **Table 1**, the State Agency has identified: (a) each federally funded, state-administered program that it administers; and (b) each SSA data exchange system to which the State Agency needs access in order to administer the identified program. The list of SSA’s data exchange systems is attached as **Attachment 2**. **Attachment 2** provides a brief explanation of each system, as well as use parameters, as necessary.

TABLE 1

FEDERALLY FUNDED BENEFIT PROGRAMS	
Program	SSA Data Exchange System(s)
<input checked="" type="checkbox"/> Medicaid	BENDEX/SDX/SVES IV/SOLQ/SVES-1-Citizenship/Quarters of Coverage/PUPS
<input type="checkbox"/> Temporary Assistance to Needy Families (TANF)	
<input type="checkbox"/> Supplemental Nutrition Assistance Program (SNAP- formally Food Stamps)	
<input type="checkbox"/> Unemployment Compensation	
<input type="checkbox"/> State Child Support Agency	
<input type="checkbox"/> Low-Income Home Energy Assistance Program (LI-HEAP)	
<input type="checkbox"/> Workers Compensation	
<input type="checkbox"/> Vocational Rehabilitation Services	



Exhibit E, Attachment B

<input type="checkbox"/> Foster Care (IV-E)	
<input checked="" type="checkbox"/> State Children’s Health Insurance Program (CHIP)	BENDEX/SDX/SVES IV, SVES-1 Citizenship
<input type="checkbox"/> Women, Infants and Children (W.I.C.)	
<input checked="" type="checkbox"/> Medicare Savings Programs (MSP)	LIS File
<input checked="" type="checkbox"/> Medicare 1144 (Outreach)	Medicare 1144 Outreach File
<input checked="" type="checkbox"/> <i>Other Federally Funded, State-Administered Programs (List Below)</i>	
Program	SSA Data Exchange System(s)
Medi-Cal Access Program (MCAP)	BENDEX/SDX/SVES IV

(2) The State Agency will use each identified data exchange system *only* for the purpose of administering the specific program for which access to the data exchange system is provided. SSA data exchange systems are protected by the Privacy Act and Federal law prohibits the use of SSA’s data for any purpose other than the purpose of administering the specific program for which such data is disclosed. In particular, the State Agency will:

- a) use the **tax return data** disclosed by SSA only to determine individual eligibility for, or the amount of, assistance under a program listed in 26 U.S.C. § 6103(1)(7) and (8).
- b) use **citizenship status data** disclosed by SSA only to determine entitlement of *new applicants* to: (a) the Medicaid program and CHIP pursuant to the Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3; or (b) federally funded, state-administered health or income maintenance programs approved by SSA to receive the *SSA Data Set* through the Centers for Medicare & Medicaid Services’ (CMS) Federal Data Services Hub (Hub).

Applicants for Social Security numbers (SSN) report their citizenship data at the time they apply for their SSNs; there is no obligation for an individual to report to SSA a change in his or her immigration status until he or she files a claim for benefits.

C. PROGRAM QUESTIONNAIRE: Prior to signing this IEA, the State Agency will complete and submit to SSA a program questionnaire for each of the federally funded, state-administered programs checked in **Table 1** above. SSA will not disclose any data under this IEA until it has received and approved the completed program questionnaire for each of the programs identified in **Table 1** above.



D. TRANSFER OF DATA: SSA will transmit the data to the State Agency under this IEA using the data transmission method identified in **Table 2** below:

TABLE 2

TRANSFER OF DATA
<p><input type="checkbox"/> Data will be transmitted directly between SSA and the State Agency.</p> <p><input checked="" type="checkbox"/> Data will be transmitted directly between SSA and The California Office of Technology (State Transmission/Transfer Component (“STC”)) by File Transfer Management System (FTMS), a secure mechanism approved by SSA. The STC will serve as the conduit between SSA and the State Agency pursuant to the State STC Agreement.</p> <p><input type="checkbox"/> Data will be transmitted directly between SSA and CMS’ Hub by a secure method of transfer approved by SSA. CMS will transmit the <i>SSA Data Set</i> between SSA and the State Agency pursuant to an agreement between SSA and CMS regarding the use of the Hub.</p> <p><input type="checkbox"/> Data will be transmitted [<i>select one: directly between SSA and the Interstate Connection Network (“ICON”) or through the [name of STC Agency/Vendor] as the conduit between SSA and the Interstate Connection Network (“ICON”)</i>]. ICON is a wide area telecommunications network connecting state agencies that administer the state unemployment insurance laws. When receiving data through ICON, the State Agency will comply with the “Systems Security Requirements for SSA Web Access to SSA Information Through the ICON,” attached as Attachment 3.</p>

E. SECURITY PROCEDURES: The State Agency will comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, the State Agency will comply with SSA’s “Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration,” attached as **Attachment 4**, as well as the Security Certification Requirements for use of the *SSA Data Set* transmitted via CMS’ Hub, attached as **Attachment 5**. The SSA security controls identified under **Attachment 4** of this IEA prevail for all SSA data received by the State Agency, as identified in Table 1 of this IEA. For any tax return data, the State Agency will also comply with the “Tax Information Security Guidelines for Federal, State and Local Agencies,” Publication 1075, published by the Secretary of the Treasury and available at the following Internal Revenue Service (IRS) website: <http://www.irs.gov/pub/irs-pdf/p1075.pdf>. This IRS Publication 1075 is incorporated by reference into this IEA.

F. STATE AGENCY’S RESPONSIBILITIES: The State Agency will not direct individuals to SSA field offices to obtain data that the State Agency is authorized to receive under this IEA in accordance with Table 1. Where disparities exist between individual-supplied data and SSA’s data, the State Agency will take the following steps before referring the individual to an SSA field office:



- Check its records to be sure that the data of the original submission has not changed (e.g., last name recently changed);
- Contact the individual to verify the data submitted is accurate; and,
- Consult with the SSA Regional Office Contact to discuss options before advising individuals to contact SSA for resolution. The Regional Office Contact will inform the State Agency of the current protocol through which the individual should contact SSA, i.e., visiting the field office, calling the national network service number, or creating an online account via *my* Social Security.

G. CONTRACTOR/AGENT RESPONSIBILITIES: The State Agency will restrict access to the data obtained from SSA to only those authorized State employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this IEA. At SSA's request, the State Agency will obtain from each of its contractors and agents a current list of the employees of its contractors and agents who have access to SSA data disclosed under this IEA. The State Agency will require its contractors, agents, and all employees of such contractors or agents with authorized access to the SSA data disclosed under this IEA, to comply with the terms and conditions set forth in this IEA, and not to duplicate, disseminate, or disclose such data without obtaining SSA's prior written approval. In addition, the State Agency will comply with the limitations on use, duplication, and redisclosure of SSA data set forth in Section IX. of the CMPPA Agreement, especially with respect to its contractors and agents.

H. SAFEGUARDING AND REPORTING RESPONSIBILITIES FOR PERSONALLY IDENTIFIABLE INFORMATION ("PII"):

1. The State Agency will ensure that its employees, contractors, and agents:
 - a. properly safeguard PII furnished by SSA under this IEA from loss, theft, or inadvertent disclosure;
 - b. understand that they are responsible for safeguarding this information at all times, regardless of whether or not the State employee, contractor, or agent is at his or her regular duty station;
 - c. ensure that laptops and other electronic devices/media containing PII are encrypted and/or password protected;
 - d. send emails containing PII only if encrypted or if to and from addresses that are secure; and
 - e. limit disclosure of the information and details relating to a PII loss only to those with a need to know.
2. If an employee of the State Agency or an employee of the State Agency's contractor or agent becomes aware of suspected or actual loss of PII, he or she must immediately contact the State Agency official responsible for Systems Security designated below or his or her delegate. That State Agency official or delegate must then notify the SSA Regional Office Contact and the SSA Systems Security Contact identified below. If, for any reason, the responsible State Agency official or delegate is unable to notify the SSA Regional Office or the SSA Systems Security Contact within 1 hour, the responsible State Agency official or delegate must report the incident by contacting SSA's National Network Service Center at 1-877-697-4889. The responsible State Agency official or delegate will use the worksheet, attached as **Attachment 6**, to quickly gather and



organize information about the incident. The responsible State Agency official or delegate must provide to SSA timely updates as any additional information about the loss of PII becomes available.

3. SSA will make the necessary contact within SSA to file a formal report in accordance with SSA procedures. SSA will notify the Department of Homeland Security's United States Computer Emergency Readiness Team if loss or potential loss of PII related to a data exchange under this IEA occurs.
4. If the State Agency experiences a loss or breach of data, it will determine whether or not to provide notice to individuals whose data has been lost or breached and bear any costs associated with the notice or any mitigation.

I. POINTS OF CONTACT:

FOR SSA

San Francisco Regional Office:

Nancy Borjon
Data Exchange Coordinator
Frank Hagel Federal Building
1221 Nevin Avenue
Richmond, CA 94801
Phone: (510) 970-8256
Fax: (510) 970-8101
Email: Nancy.Borjon@ssa.gov

Data Exchange Issues:

Sarah Reagan
Government Information Specialist
Office of the General Counsel
Office of Privacy and Disclosure
617 Altmeyer
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 965-9127
Fax: (410) 594-0115
Email: Sarah.Reagan@ssa.gov

Program and Policy Issues:

Michael Wilkins
State Liaison Program Manager
Office of Retirement and Disability Policy
Office of Data Exchange and Policy
Publications
Office of Data Exchange
3609 Annex Building
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 966-4965
Fax: (410) 966-4054
Email: Michael.Wilkins@ssa.gov

Systems Security Issues:

Sean Hagan, Acting Director
Division of Compliance and
Assessments
Office of Information Security
Office of Systems
Social Security Administration
3829 Annex Building
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 965-4519
Fax: (410) 597-0845
Email: Sean.Hagan@ssa.gov

Systems Issues:

Michelle J. Anderson, Branch Chief
DBIAE/Data Exchange and Verification
Branch



Office of Information Technology Business
Support
Office of Systems
3-D-1 Robert M. Ball Building
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 965-5943
Fax: (410) 966-3147
Email: Michelle.J.Anderson@ssa.gov

FOR STATE AGENCY

Agreement Issues:

Rocky Evans
Chief, Eligibility Administration Section
Program Review Branch
Medi-Cal Eligibility Division (MCED)
1501 Capitol Avenue
Sacramento, CA 95814
Phone: (916) 319-8434
Fax: (916) 552-9477
Email: Rocky.Evans@dhcs.ca.gov

Technical Issues:

YK Chalamcherla
Chief, Application Development &
Support Branch
Enterprise Innovative Technology
Services (EITS)
1501 Capitol Avenue
Sacramento, CA 95814
Phone: (916) 322-8044
Fax: (916) 440-7065
Email: YK.Chalamcherla@dhcs.ca.gov

Sean Wieland
Chief, Business & Application
Integration Section
Enterprise Innovative Technology
Services (EITS)
1501 Capitol Avenue
Sacramento, CA 95814
Phone: (916) 550-7088
Fax: (916) 440-7065
Email: Sean.Wieland@dhcs.ca.gov

- J. DURATION:** The effective date of this IEA is March 6, 2017. This IEA will remain in effect for as long as: (1) a CMPPA Agreement governing this IEA is in effect between SSA and the State or the State Agency; and (2) the State Agency submits a certification in accordance with Section K. below at least 30 days before the expiration and renewal of such CMPPA Agreement.
- K. CERTIFICATION AND PROGRAM CHANGES:** At least 30 days before the expiration and renewal of the State CMPPA Agreement governing this IEA, the State Agency will certify in writing to SSA that: (1) it is in compliance with the terms and conditions of this IEA; (2) the data exchange processes under this IEA have been and will be conducted without change; and (3) it will, upon SSA's request, provide audit reports or other documents that demonstrate review and oversight activities. If there are substantive changes in any of the programs or data exchange processes listed in this IEA, the parties will modify the IEA in



accordance with Section L. below and the State Agency will submit for SSA's approval new program questionnaires under Section C. above describing such changes prior to using SSA's data to administer such new or changed program.

- L. MODIFICATION:** Modifications to this IEA must be in writing and agreed to by the parties.
- M. TERMINATION:** The parties may terminate this IEA at any time upon mutual written consent. In addition, either party may unilaterally terminate this IEA upon 90 days advance written notice to the other party. Such unilateral termination will be effective 90 days after the date of the notice, or at a later date specified in the notice.

SSA may immediately and unilaterally suspend the data flow under this IEA, or terminate this IEA, if SSA, in its sole discretion, determines that the State Agency (including its employees, contractors, and agents) has: (1) made an unauthorized use or disclosure of SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this IEA or the CMPPA Agreement.

- N. INTEGRATION:** This IEA, including all attachments, constitutes the entire agreement of the parties with respect to its subject matter. There have been no representations, warranties, or promises made outside of this IEA. This IEA shall take precedence over any other document that may be in conflict with it.

ATTACHMENTS

- 1 – CMPPA Agreement
- 2 – SSA Data Exchange Systems
- 3 – Systems Security Requirements for SSA Web Access to SSA Information Through ICON
- 4 – Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration
- 5 – Security Certification Requirements for use of the *SSA Data Set* Transmitted via CMS' Hub
- 6 – PII Loss Reporting Worksheet

O. AUTHORIZED SIGNATURES: The signatories below warrant and represent that they have competent authority on behalf of their respective agency to enter into the obligations set forth in this IEA.

SOCIAL SECURITY ADMINISTRATION
REGION IX



Grace M. Kim
Regional Commissioner

05/03/2017

Date

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES



Jennifer Kent
Director, California Department of Health Care Services

4/7/17

Date



**CERTIFICATION OF COMPLIANCE
FOR
THE INFORMATION EXCHANGE AGREEMENT
BETWEEN
THE SOCIAL SECURITY ADMINISTRATION (SSA)
AND
THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (STATE
AGENCY)
(State Agency Level)**

In accordance with the terms of the Information Exchange Agreement (IEA/F) between SSA and the State Agency, the State Agency, through its authorized representative, hereby certifies that, as of the date of this certification:

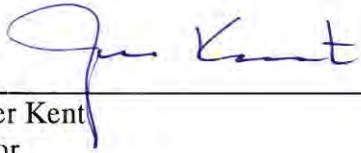
1. The State Agency is in compliance with the terms and conditions of the IEA/F;
2. The State Agency has conducted the data exchange processes under the IEA/F without change, except as modified in accordance with the IEA/F;
3. The State Agency will continue to conduct the data exchange processes under the IEA/F without change, except as may be modified in accordance with the IEA/F;
4. Upon SSA's request, the State Agency will provide audit reports or other documents that demonstrate compliance with the review and oversight activities required under the IEA/F and the governing Computer Matching and Privacy Protection Act Agreement; and
5. In compliance with the requirements of the "Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration," (last updated July 2015) Attachment 4 to the IEA/F, as periodically updated by SSA, the State Agency has not made any changes in the following areas that could potentially affect the security of SSA data:
 - General System Security Design and Operating Environment
 - System Access Control
 - Automated Audit Trail
 - Monitoring and Anomaly Detection
 - Management Oversight
 - Data and Communications Security
 - Contractors of Electronic Information Exchange Partners
 - Cloud Service Providers for Electronic Information Exchange Partners

The State Agency will submit an updated Security Design Plan at least 30 days prior to making any changes to the areas listed above and provide updated contractor employee lists before allowing new employees' access to SSA provided data.

6. The State Agency agrees that use of computer technology to transfer the data is more economical, efficient, and faster than using a manual process. As such, the State Agency will continue to utilize data exchange to obtain data it needs to administer the programs for which it is authorized, under the IEA/F. Further, before directing an individual to an SSA field office to obtain data, the State Agency will verify that the information it submitted to SSA via data exchange is correct, and verify with the individual that the information he/she supplied is accurate. The use of electronic data exchange expedites program administration and limits SSA field office traffic.

The signatory below warrants and represents that he or she is a representative of the State Agency duly authorized to make this certification on behalf of the State Agency.

DEPARTMENT OF HEALTH CARE SERVICES OF CALIFORNIA



Jennifer Kent
Director

5/17/17

Date

ATTACHMENT 1

**COMPUTER MATCHING AND PRIVACY PROTECTION ACT AGREEMENT
(CMPPA)**

COMPUTER MATCHING AND PRIVACY PROTECTION ACT AGREEMENT
BETWEEN
THE SOCIAL SECURITY ADMINISTRATION
AND
THE HEALTH AND HUMAN SERVICES AGENCY
OF CALIFORNIA

I. Purpose and Legal Authority

A. Purpose

This Computer Matching and Privacy Protection Act (CMPPA) Agreement (Agreement) between the Social Security Administration (SSA) and the Health and Human Services Agency of California (State Agency) sets forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as “data”) made by SSA to the State Agency that administers federally funded benefit programs, including those under various provisions of the Social Security Act (Act), such as section 1137 (42 U.S.C. § 1320b-7), as well as the state-funded state supplementary payment programs under Title XVI of the Act. The terms and conditions of this Agreement ensure that SSA makes such disclosures of data, and the State Agency uses such disclosed data, in accordance with the requirements of the Privacy Act of 1974, as amended by the CMPPA of 1988, 5 U.S.C. § 552a.

Under section 1137 of the Act, the State Agency is required to use an income and eligibility verification system to administer specified federally funded benefit programs, including the state-funded state supplementary payment programs under Title XVI of the Act. To assist the State Agency in determining entitlement to and eligibility for benefits under those programs, as well as other federally funded benefit programs, SSA discloses certain data about applicants (and in limited circumstances, members of an applicant’s household), for state benefits from SSA Privacy Act Systems of Records (SOR) and verifies the Social Security numbers (SSN) of the applicants.

B. Legal Authority

SSA’s authority to disclose data and the State Agency’s authority to collect, maintain, and use data protected under SSA SORs for specified purposes is:

- Sections 453, 1106(b), and 1137 of the Act (42 U.S.C. §§ 653, 1306(b), and 1320b-7) (income and eligibility verification data);
- 26 U.S.C. § 6103(l)(7) and (8) (tax return data);
- Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. § 402(x)(3)(B)(iv)) and Section 1611(e)(1)(I)(iii) of the Act (42 U.S.C. § 1382(e)(1)(I)(iii)) (prisoner data);

- Section 205(r)(3) of the Act (42 U.S.C. § 405(r)(3)) and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, § 7213(a)(2) (death data);
- Sections 402, 412, 421, and 435 of Pub. L. 104-193 (8 U.S.C. §§ 1612, 1622, 1631, and 1645) (quarters of coverage data);
- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Pub. L. 111-3 (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. § 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

This Agreement further carries out section 1106(a) of the Act (42 U.S.C. § 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the CMPPA, related Office of Management and Budget (OMB) guidelines, the Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. § 3541, et seq.), as amended by the Federal Information Security Modernization Act of 2014 (Pub. L. 113-283); and related National Institute of Standards and Technology (NIST) guidelines, which provide the requirements that the State Agency must follow with regard to use, treatment, and safeguarding of data.

II. Scope

- A. The State Agency will comply with the terms and conditions of this Agreement and the Privacy Act, as amended by the CMPPA.
- B. The State Agency will execute an Information Exchange Agreement (IEA) with SSA, documenting additional terms and conditions applicable to those specific data exchanges, including the particular benefit programs administered by the State Agency, the data elements that will be disclosed, and the data protection requirements implemented to assist the State Agency in the administration of those programs.
- C. The State Agency will use the SSA data governed by this Agreement to determine entitlement and eligibility of individuals for one or more of the following programs, which are specifically identified in the IEA:
 1. Temporary Assistance to Needy Families (TANF) program under Part A of Title IV of the Act;
 2. Medicaid provided under an approved State plan or an approved waiver under Title XIX of the Act;
 3. State Children's Health Insurance Program (CHIP) under Title XXI of the Act, as amended by the Children's Health Insurance Program Reauthorization Act of 2009;

4. Supplemental Nutritional Assistance Program (SNAP) under the Food Stamp Act of 1977 (7 U.S.C. § 2011, et seq.);
 5. Women, Infants and Children Program (WIC) under the Child Nutrition Act of 1966 (42 U.S.C. § 1771, et seq.);
 6. Medicare Savings Programs (MSP) under 42 U.S.C. § 1396a(10)(E);
 7. Unemployment Compensation programs provided under a state law described in section 3304 of the Internal Revenue Code of 1954;
 8. Low Income Heating and Energy Assistance (LIHEAP or home energy grants) program under 42 U.S.C. § 8621;
 9. State-administered supplementary payments of the type described in section 1616(a) of the Act;
 10. Programs under a plan approved under Titles I, X, XIV, or XVI of the Act;
 11. Foster Care and Adoption Assistance under Title IV of the Act;
 12. Child Support Enforcement programs under section 453 of the Act (42 U.S.C. § 653);
 13. Other applicable federally funded programs administered by the State Agency under Titles I, IV, X, XIV, XVI, XVIII, XIX, XX, and XXI of the Act; and
 14. Any other federally funded programs administered by the State Agency that are compatible with SSA's programs.
- D. The State Agency will ensure that SSA data disclosed for the specific purpose of administering a particular federally funded benefit program is used only to administer that program.

III. Justification and Expected Results

A. Justification

This Agreement and related data exchanges with the State Agency are necessary for SSA to assist the State Agency in its administration of federally funded benefit programs by providing the data required to accurately determine entitlement and eligibility of individuals for benefits provided under these programs. SSA uses computer technology to transfer the data because it is more economical, efficient, and faster than using manual processes.

B. Expected Results

The State Agency will use the data provided by SSA to improve public service and program efficiency and integrity. The use of SSA data expedites the application process and ensures that benefits are awarded only to applicants that satisfy the State Agency's program criteria. A cost-benefit analysis for the exchange made under this Agreement is not required in accordance with the determination by the SSA Data Integrity Board (DIB) to waive such analysis pursuant to 5 U.S.C. § 552a(u)(4)(B).

IV. Record Description

A. Systems of Records (SOR)

SSA SORs used for purposes of the subject data exchanges include:

- 60-0058 -- Master Files of SSN Holders and SSN Applications;
- 60-0059 -- Earnings Recording and Self-Employment Income System;
- 60-0090 -- Master Beneficiary Record;
- 60-0103 -- Supplemental Security Income Record (SSR) and Special Veterans Benefits (SVB);
- 60-0269 -- Prisoner Update Processing System (PUPS); and
- 60-0321 -- Medicare Part D and Part D Subsidy File.

The State Agency will only use the tax return data contained in **SOR 60-0059** (Earnings Recording and Self-Employment Income System) in accordance with 26 U.S.C. § 6103.

B. Data Elements

Data elements disclosed in computer matching governed by this Agreement are Personally Identifiable Information (PII) from specified SSA SORs, including names, SSNs, addresses, amounts, and other information related to SSA benefits and earnings information. Specific listings of data elements are available at:

<http://www.ssa.gov/dataexchange/>

C. Number of Records Involved

The maximum number of records involved in this matching activity is the number of records maintained in SSA's SORs listed above in Section IV.A.

V. Notice and Opportunity to Contest Procedures

A. Notice to Applicants

The State Agency will notify all individuals who apply for federally funded, state-administered benefits that any data they provide are subject to verification through computer matching with SSA. The State Agency and SSA will provide such notice through appropriate language printed on application forms or separate handouts.

B. Notice to Beneficiaries/Recipients/Annuitants

The State Agency will provide notice to beneficiaries, recipients, and annuitants under the programs covered by this Agreement informing them of ongoing computer matching with SSA. SSA will provide such notice through publication in the Federal Register and periodic mailings to all beneficiaries, recipients, and annuitants describing SSA's matching activities.

C. Opportunity to Contest

The State Agency will not terminate, suspend, reduce, deny, or take other adverse action against an applicant for or recipient of federally funded, state-administered benefits based on data disclosed by SSA from its SORs until the individual is notified in writing of the potential adverse action and provided an opportunity to contest the planned action. "Adverse action" means any action that results in a termination, suspension, reduction, or final denial of eligibility, payment, or benefit. Such notices will:

1. Inform the individual of the match findings and the opportunity to contest these findings;
2. Give the individual until the expiration of any time period established for the relevant program by a statute or regulation for the individual to respond to the notice. If no such time period is established by a statute or regulation for the program, a 30-day period will be provided. The time period begins on the date on which notice is mailed or otherwise provided to the individual to respond; and
3. Clearly state that, unless the individual responds to the notice in the required time period, the State Agency will conclude that the SSA data are correct and will effectuate the planned action or otherwise make the necessary adjustment to the individual's benefit or entitlement.

VI. Records Accuracy Assessment and Verification Procedures

Pursuant to 5 U.S.C. § 552a(p)(1)(A)(ii), SSA's DIB has determined that the State Agency may use SSA's benefit data without independent verification. SSA has independently assessed the accuracy of its benefits data to be more than 99 percent accurate when the benefit record is created.

Prisoner and death data, some of which is not independently verified by SSA, does not have the same degree of accuracy as SSA's benefit data. Therefore, the State Agency must independently verify these data through applicable State verification procedures and the notice and opportunity to contest procedures specified in Section V of this Agreement before taking any adverse action against any individual.

Based on SSA's Office of Quality Review "Fiscal Year 2014 Enumeration Accuracy Report," the SSA Enumeration System database (the Master Files of SSN Holders and SSN Applications System) used for SSN matching is 99 percent accurate for records updated by SSA employees.

Individuals applying for SSNs report their citizenship status at the time they apply for their SSNs. There is no obligation for an individual to report to SSA a change in his or her immigration status until he or she files for a Social Security benefit. The State Agency must independently verify citizenship data through applicable State verification procedures and the notice and opportunity to contest procedures specified in Section V of this Agreement before taking any adverse action against any individual.

VII. Disposition and Records Retention of Matched Items

- A. The State Agency will retain all data received from SSA to administer programs governed by this Agreement only for the required processing times for the applicable federally funded benefit programs and will then destroy all such data.
- B. The State Agency may retain SSA data in hardcopy to meet evidentiary requirements, provided that they retire such data in accordance with applicable state laws governing the State Agency's retention of records.
- C. The State Agency may use any accretions, deletions, or changes to the SSA data governed by this Agreement to update their master files of federally funded, state-administered benefit program applicants and recipients and retain such master files in accordance with applicable state laws governing the State Agency's retention of records.
- D. The State Agency may not create separate files or records comprised solely of the data provided by SSA to administer programs governed by this Agreement.
- E. SSA will delete electronic data input files received from the State Agency after it processes the applicable match. SSA will retire its data in accordance with the Federal Records Retention Schedule (44 U.S.C. § 3303a).

VIII. Security Procedures

SSA and the State Agency will comply with the security and safeguarding requirements of the Privacy Act, as amended by the CMPPA, related OMB guidelines, FISMA, related NIST guidelines, and the current revision of Internal Revenue Service (IRS) Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*, available at <http://www.irs.gov>. In addition, SSA

and the State Agency will have in place administrative, technical, and physical safeguards for the matched data and results of such matches. Additional administrative, technical, and physical security requirements governing all data SSA provides electronically to the State Agency, including SSA's *Electronic Information Exchange Security Requirements and Procedures for State and local Agencies Exchanging Electronic Information with SSA*, as well as specific guidance on safeguarding and reporting responsibilities for PII, are set forth in the IEAs.

SSA has the right to monitor the State Agency's compliance with FISMA, the terms of this Agreement, and the IEA and to make onsite inspections of the State Agency for purposes of auditing compliance, if necessary, during the lifetime of this Agreement or of any extension of this Agreement. This right includes onsite inspection of any entity that receives SSA information from the State Agency under the terms of this Agreement, if SSA determines it is necessary.

IX. Records Usage, Duplication, and Redisclosure Restrictions

- A. The State Agency will use and access SSA data and the records created using that data only for the purpose of verifying eligibility for the specific federally funded benefit programs identified in the IEA.
- B. The State Agency will comply with the following limitations on use, duplication, and redisclosure of SSA data:
 1. The State Agency will not use or redisclose the data disclosed by SSA for any purpose other than to determine eligibility for, or the amount of, benefits under the state-administered income/health maintenance programs identified in this Agreement.
 2. The State Agency will not extract information concerning individuals who are neither applicants for, nor recipients of, benefits under the state-administered income/health maintenance programs identified in this Agreement. In limited circumstances that are approved by SSA, the State Agency may extract information about an individual other than the applicant/recipient when the applicant/recipient has provided identifying information about the individual and the individual's income or resources affect the applicant's/recipient's eligibility for such program.
 3. The State Agency will not disclose to an applicant/recipient information about another individual (i.e., an applicant's household member) without the written consent from the individual to whom the information pertains.
 4. The State Agency will use the Federal tax information (FTI) disclosed by SSA only to determine individual eligibility for, or the amount of, assistance under a state plan pursuant to section 1137 programs and child support enforcement

programs in accordance with 26 U.S.C. § 6103(l)(7) and (8). The State Agency receiving FTI will maintain all FTI from IRS in accordance with 26 U.S.C. § 6103(p)(4) and the IRS Publication 1075. Contractors and agents acting on behalf of the State Agency will only have access to tax return data where specifically authorized by 26 U.S.C. § 6103 and the current revision IRS Publication 1075.

5. The State Agency will use the citizenship status data disclosed by SSA only to determine entitlement of new applicants to: (a) the Medicaid program and CHIP pursuant to CHIPRA, Pub. L. 111-3; or (b) federally funded, state-administered health or income maintenance programs approved by SSA. The State Agency will further comply with additional terms and conditions regarding use of citizenship data, as set forth in the State Agency's IEA.
6. The State Agency will restrict access to the data disclosed by SSA to only those authorized State employees, contractors, and agents who need such data to perform their official duties in connection with the purposes identified in this Agreement.
7. The State Agency will enter into a written agreement with each of its contractors and agents who need SSA data to perform their official duties whereby such contractor or agent agrees to abide by all relevant Federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement. The State Agency will provide its contractors and agents with copies of this Agreement, related IEAs, and all related attachments before initial disclosure of SSA data to such contractors and agents. Prior to signing this Agreement, and thereafter at SSA's request, the State Agency will obtain from its contractors and agents a current list of the employees of such contractors and agents with access to SSA data and provide such lists to SSA.
8. If the State Agency is authorized or required – pursuant to an applicable law, regulation, or intra-governmental documentation – to provide SSA data to another State or local government entity for the administration of the federally funded, state-administered programs covered by this Agreement, the State Agency must ensure that the State or local government entity, including its employees, abides by all relevant Federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement and the IEA. At SSA's request, the State Agency will provide copies of any applicable law, regulation, or intra-governmental documentation that authorizes the intra-governmental relationship with the State or local government entity. Upon request from SSA, the State Agency will also establish how it ensures that State or local government entity complies with the terms of this Agreement and the IEA.
9. The State Agency's employees, contractors, and agents who access, use, or disclose SSA data in a manner or purpose not authorized by this Agreement

may be subject to civil and criminal sanctions pursuant to applicable Federal statutes.

10. The State Agency will conduct triennial compliance reviews of its contractor(s) and agent(s) no later than three years after the initial approval of the security certification to SSA. The State Agency will share documentation of its recurring compliance reviews with its contractor(s) and agent(s) with SSA. The State Agency will provide documentation to SSA during its scheduled compliance and certification reviews or upon request.
- C. The State Agency will not duplicate in a separate file or disseminate, without prior written permission from SSA, the data governed by this Agreement for any purpose other than to determine entitlement to, or eligibility for, federally funded benefits. The State Agency proposing the redisclosure must specify in writing to SSA what data are being disclosed, to whom, and the reasons that justify the redisclosure. SSA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the conduct of the matching program and authorized under a routine use. To the extent SSA approves the requested redisclosure, the State Agency will ensure that any entity receiving the redisclosed data will comply with the procedures and limitations on use, duplication, and redisclosure of SSA data, as well as all administrative, technical, and physical security requirements governing all data SSA provides electronically to the State Agency including specific guidance on safeguarding and reporting responsibilities for PII, as set forth in this Agreement and the accompanying IEAs.

X. Comptroller General Access

The Comptroller General (the Government Accountability Office) may have access to all records of the State Agency that the Comptroller General deems necessary to monitor and verify compliance with this Agreement in accordance with 5 U.S.C. § 552a(o)(1)(K).

XI. Duration, Modification, and Termination of the Agreement

A. Duration

1. This Agreement is effective from July 1, 2017 (Effective Date) through December 31, 2018 (Expiration Date).
2. In accordance with the CMPPA, SSA will: (a) publish a Computer Matching Notice in the Federal Register at least 30 days prior to the Effective Date; (b) send required notices to the Congressional committees of jurisdiction under 5 U.S.C. § 552a(o)(2)(A)(i) at least 40 days prior to the

Effective Date; and (c) send the required report to OMB at least 40 days prior to the Effective Date.

3. Within 3 months prior the Expiration Date, the SSA DIB may, without additional review, renew this Agreement for a period not to exceed 12 months, pursuant to 5 U.S.C. § 552a(o)(2)(D), if:
 - the applicable data exchange will continue without any change; and
 - SSA and the State Agency certify to the DIB in writing that the applicable data exchange has been conducted in compliance with this Agreement.
4. If either SSA or the State Agency does not wish to renew this Agreement, it must notify the other party of its intent not to renew at least 3 months prior to the Expiration Date.

B. Modification

Any modification to this Agreement must be in writing, signed by both parties, and approved by the SSA DIB.

C. Termination

The parties may terminate this Agreement at any time upon mutual written consent of both parties. Either party may unilaterally terminate this Agreement upon 90 days advance written notice to the other party; such unilateral termination will be effective 90 days after the date of the notice, or at a later date specified in the notice.

SSA may immediately and unilaterally suspend the data flow or terminate this Agreement if SSA determines, in its sole discretion, that the State Agency has violated or failed to comply with this Agreement.

XII. Reimbursement

In accordance with section 1106(b) of the Act, the Commissioner of SSA has determined not to charge the State Agency the costs of furnishing the electronic data from the SSA SORs under this Agreement.

XIII. Disclaimer

SSA is not liable for any damages or loss resulting from errors in the data provided to the State Agency under any IEAs governed by this Agreement. Furthermore, SSA

is not liable for any damages or loss resulting from the destruction of any materials or data provided by the State Agency.

The performance or delivery by SSA of the goods and/or services described herein and the timeliness of said delivery are authorized only to the extent that they are consistent with proper performance of the official duties and obligations of SSA and the relative importance of this request to others. If for any reason SSA delays or fails to provide services, or discontinues the services or any part thereof, SSA is not liable for any damages or loss resulting from such delay or for any such failure or discontinuance.

XIV. Points of Contact

A. SSA Point of Contact

San Francisco Regional Office:

Jamie Lucero, Director

San Francisco Regional Office, Center for Disability and Programs Support

1221 Nevin Ave., 6th Floor

Richmond, CA 94801

Phone: 510-970-8297

Fax: 510-970-8101

Email: Jamie.Lucero@ssa.gov

B. State Agency Point of Contact

Sonia Herrera

California Health and Human Services Agency

1600 Ninth Street

Sacramento, CA 95814

Phone: 916-654-3459 / Fax: 916-440-5001

Email: Sonia.Herrera@chhs.ca.gov

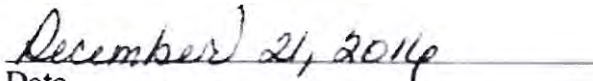
XV. SSA and Data Integrity Board Approval of Model CMPPA Agreement

The signatories below warrant and represent that they have the competent authority on behalf of SSA to approve the model of this CMPPA Agreement.

SOCIAL SECURITY ADMINISTRATION



Mary Ann Zimmerman
Acting Deputy Executive Director
Office of Privacy and Disclosure
Office of the General Counsel


Date

I certify that the SSA Data Integrity Board approved the model of this CMPPA Agreement.




Glenn Sklar
Acting Chair
SSA Data Integrity Board


Date

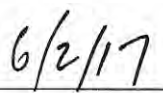
XVI. Authorized Signatures

The signatories below warrant and represent that they have the competent authority on behalf of their respective agency to enter into the obligations set forth in this Agreement.

SOCIAL SECURITY ADMINISTRATION

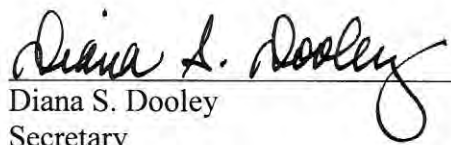


Grace M. Kim
Regional Commissioner
San Francisco

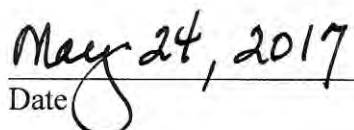


Date

HEALTH AND HUMAN SERVICES AGENCY



Diana S. Dooley
Secretary



Date

ATTACHMENT 2

AUTHORIZED DATA EXCHANGE SYSTEM(S)

Authorized Data Exchange System(s)

BEER (Beneficiary Earnings Exchange Record): Employer data for the last calendar year.

BENDEX (Beneficiary and Earnings Data Exchange): Primary source for Title II eligibility, benefit and demographic data.

LIS (Low-Income Subsidy): Data from the Low-Income Subsidy Application for Medicare Part D beneficiaries -- used for Medicare Savings Programs (MSP).

Medicare 1144 (Outreach): Lists of individuals on SSA roles, who may be eligible for medical assistance for: payment of the cost of Medicare cost-sharing under the Medicaid program pursuant to Sections 1902(a)(10)(E) and 1933 of the Act; transitional assistance under Section 1860D-31(f) of the Act; or premiums and cost-sharing subsidies for low-income individuals under Section 1860D-14 of the Act.

PUPS (Prisoner Update Processing System): Confinement data received from over 2000 state and local institutions (such as jails, prisons, or other penal institutions or correctional facilities) -- PUPS matches the received data with the MBR and SSR benefit data and generates alerts for review/action.

QUARTERS OF COVERAGE (QC): Quarters of Coverage data as assigned and described under Title II of the Act -- The term "quarters of coverage" is also referred to as "credits" or "Social Security credits" in various SSA public information documents, as well as to refer to "qualifying quarters" to determine entitlement to receive Food Stamps.

SDX (SSI State Data Exchange): Primary source of Title XVI eligibility, benefit and demographic data as well as data for Title VIII Special Veterans Benefits (SVB).

SOLQ/SOLQ-I (State On-line Query/State On-line Query-Internet): A real-time online system that provides SSN verification and MBR and SSR benefit data similar to data provided through SVES.

Attachment 2

SVES (State Verification and Exchange System): A batch system that provides SSN verification, MBR benefit information, and SSR information through a uniform data response based on authorized user-initiated queries. The SVES types are divided into five different responses as follows:

- | | |
|----------------------------|---|
| SVES I: | This batch provides strictly SSN verification. |
| SVES I/Citizenship* | This batch provides strictly SSN verification and citizenship data. |
| SVES II: | This batch provides strictly SSN verification and MBR benefit information |
| SVES III: | This batch provides strictly SSN verification and SSR/SVB. |
| SVES IV: | This batch provides SSN verification, MBR benefit information, and SSR/SVB information, which represents all available SVES data. |

** Citizenship status data disclosed by SSA under the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 is only for the purpose of determining entitlement to Medicaid and CHIP program for new applicants.*



ATTACHMENT 3

SYSTEM SECURITY REQUIREMENTS THROUGH THE ICON SYSTEM

Not Applicable

Attachment 3

**Systems Security Requirements for SWA Access
to SSA Information Through the ICON System**

12/9/2016

Systems Security Requirements for SWA Access to SSA Information Through the ICON System

A. General Systems Security Standards

SWA's that request and receive information from SSA through the ICON system must comply with the following general systems security standards concerning access to and control of SSA information. The SWA must restrict access to the information to authorized employees who need it to perform their official duties. Similar to IRS requirements, information retrieved from SSA must be stored in a manner that is physically and electronically secure from access by unauthorized persons during both duty and non-duty hours, or when not in use. SSA information must be processed under the immediate supervision and control of authorized personnel. The SWA must employ both physical and electronic safeguards to ensure that unauthorized personnel cannot retrieve SSA information by means of computer, remote terminal or other means.

All persons who will have access to any SSA information must be advised of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in the applicable Federal and State laws. SSA may, at its discretion, make on-site inspections or other provisions to ensure that adequate safeguards are being maintained by the SWA.

B. System Security Requirements for SWA's

SWA's that receive SSA information through the ICON system must comply with the following systems security requirements which must be met before DOL will approve a request from an SWA for online access to SSA information through the ICON system. The SWA system security design and procedures must conform to these requirements. They must be documented by the SWA and subsequently certified by either DOL or by an Independent Verification and Validation (IV&V) contractor prior to initiating transactions to and from SSA through the ICON.

No specific format for submitting this documentation to DOL is required. However, regardless of how it is presented, the information should be submitted to DOL in both hardcopy and electronic format, and the hardcopy should be submitted over the signature of an official representative of the SWA. Written documentation should address each of the following security control areas:

1. General System Security Design and Operating Environment

The SWA must provide a written description of its' system configuration and security features. This should include the following:

- a. A general description of the major hardware, software and communications platforms currently in use, including a description of the system's security design features and user access controls; and
- b. A description of how SSA information will be obtained by and presented to SWA users, including sample computer screen presentation formats and an explanation of whether the SWA system will request information from SSA by means of systems generated or user initiated transactions; and
- c. A description of the organizational structure and relationships between systems managers, systems security personnel, and users, including an estimate of the number of users that will have access to SSA data within the SWA system and an explanation of their job descriptions.

Meeting this Requirement

SWA's must explain in their documentation the overall design and security features of their system. During onsite certification, the IV&V contractor, or other certifier, will use the SWA's design documentation and discussion of the additional systems security requirements (following) as their guide for conducting the onsite certification and for verifying that the SWA systems and procedures conform to SSA requirements.

Following submission to the DOL in connection with the initial certification process, the documentation must be updated any time significant architectural changes are made to the system or to its' security features. During its future compliance reviews (see below), the SSA will ask to review the updated design documentation as needed.

2. Automated Audit Trail

SWA's receiving SSA information through the ICON system must implement and maintain a fully automated audit trail system capable of data collection, data retrieval and data storage. At a minimum, data collected through the audit trail system must associate each query transaction to its initiator and relevant business purpose (i.e. the SWA client record for which SSA data was requested), and each transaction must be time and date stamped. Each query transaction must be stored

in the audit file as a separate record, not overlaid by subsequent query transactions.

Access to the audit file must be restricted to authorized users with a “need to know” and audit file data must be unalterable (read only) and maintained for a minimum of three (preferably seven) years. Retrieval of information from the automated audit trail may be accomplished online or through batch access. This requirement must be met before DOL will approve the SWA’s request for access to SSA information through the ICON system.

If SSA-supplied information is retained in the SWA system, or if certain data elements within the SWA system will indicate to users that the information has been verified by SSA, the SWA system also must capture an audit trail record of any user who views SSA information stored within the SWA system. The audit trail requirements for these inquiry transactions are the same as those outlined above for SWA transactions requesting information directly from SSA.

Meeting this Requirement

The SWA must include in their documentation a description of their audit trail capability and a discussion of how it conforms to SSA’s requirements. During onsite certification, the IV&V contractor, or other certifier, will request a demonstration of the system’s audit trail and retrieval capability. The SWA must be able to identify employee’s who initiate online requests for SSA information (or, for systems generated transaction designs, the SWA case that triggered the transaction), the time and date of the request, and the purpose for which the transaction was originated. The certifier, or IV&V contractor, also will request a demonstration of the system’s audit trail capability for tracking the activity of SWA employees that are permitted to view SSA supplied information within the SWA system, if applicable.

During its future compliance reviews (see below), the SSA also will test the SWA audit trail capability by requesting verification of a sample of transactions it has processed from the SWA after implementation of access to SSA information through the ICON system.

3. System Access Control

The SWA must utilize and maintain technological (logical) access controls that limit access to SSA information to only those users authorized for such access based on their official duties. The SWA must use a recognized user access security software package (e.g. RAC-F, ACF-2, TOP SECRET) or an equivalent security software design. The access control software must utilize personal identification numbers (PIN) and passwords (or biometric identifiers) in combination with the user’s system identification code. The SWA must have

management control and oversight of the function of authorizing individual user access to SSA information, and over the process of issuing and maintaining access control PINs and passwords for access to the SWA system.

Meeting this Requirement

The SWA must include in their documentation a description of their technological access controls, including identifying the type of software used, an overview of the process used to grant access to protected information for workers in different job categories, and a description of the function responsible for PIN/password issuance and maintenance.

During onsite certification, the IV&V contractor, or other certifier, will meet with the individual(s) responsible for these functions to verify their responsibilities in the SWA's access control process and will observe a demonstration of the procedures for logging onto the SWA system and for accessing SSA information.

4. Monitoring and Anomaly Detection

The SWA's system must include the capability to prevent employees from browsing (i.e. unauthorized access or use of SSA information) SSA records for information not related to an SWA client case (e.g. celebrities, SWA employees, relatives, etc.) If the SWA system design is transaction driven (i.e. employees cannot initiate transactions themselves, rather, the SWA system triggers the transaction to SSA), or if the design includes a "permission module" (i.e. the transaction requesting information from SSA cannot be triggered by an SWA employee unless the SWA system contains a record containing the client's Social Security Number), then the SWA needs only minimal additional monitoring and anomaly detection. If such designs are used, the SWA only needs to monitor any attempts by their employees to obtain information from SSA for clients not in their client system, or attempts to gain access to SSA data within the SWA system by employees not authorized to have access to such information.

If the SWA design does not include either of the security control features described above, then the SWA must develop and implement compensating security controls to prevent their employees from browsing SSA records. These controls must include monitoring and anomaly detection features, either systematic, manual, or a combination thereof. Such features must include the capability to detect anomalies in the volume and/or type of queries requested by individual SWA employees, and systematic or manual procedures for verifying that requests for SSA information are in compliance with valid official business purposes. The SWA system must produce reports providing SWA management and/or supervisors with the capability to appropriately monitor user activity, such as:

- User ID exception reports

This type of report captures information about users who enter incorrect user ID's when attempting to gain access to the system or to the transaction that initiates requests for information from SSA, including failed attempts to enter a password.

- Inquiry match exception reports

This type of report captures information about users who may be initiating transactions for Social Security Numbers that have no client case association within the SWA system.

- System error exception reports

This type of report captures information about users who may not understand or be following proper procedures for access to SSA information through the ICON system.

- Inquiry activity statistical reports

This type of report captures information about transaction usage patterns among authorized users, which would provide SWA management a tool for monitoring typical usage patterns compared to extraordinary usage.

The SWA must have a process for distributing these monitoring and exception reports to appropriate local managers/supervisors, or to local security officers, to ensure that the reports are used by those whose responsibilities include monitoring the work of the authorized users.

Meeting this Requirement

The SWA must explain in their documentation how their system design will monitor and/or prevent their employees from browsing SSA information. If the design is based on a "permission module" (see above), a similar design, or is transaction driven (i.e. no employee initiated transactions) then the SWA does not need to implement additional systematic and/or managerial oversight procedures to monitor their employees access to SSA information. The SWA only needs to monitor user access control violations. The documentation should clearly explain how the system design will prevent SWA employees from browsing SSA records.

If the SWA system design permits employee initiated transactions that are uncontrolled (i.e. no systematically enforced relationship to an SWA client), then the SWA must develop and document the monitoring and anomaly detection process they will employ to deter their employees from browsing SSA

information. The SWA should include sample report formats demonstrating their capability to produce the types of reports described above, and the SWA should include a description of the process that will be used to distribute these reports to managers/supervisors, and the management controls that will ensure the reports are used for their intended purpose.

During onsite certification, the IV&V contractor, or other certifier, will request a demonstration of the SWA's monitoring and anomaly detection capability.

- If the design is based on a permission module or similar design, or is transaction driven, the SWA will demonstrate how the system triggers requests for information from SSA.
- If the design is based on a permission module, the SWA will demonstrate the process by which requests for SSA information are prevented for Social Security Numbers not present in the SWA system (e.g. by attempting to obtain information from SSA using at least one, randomly created, fictitious number not known to the SWA system.)
- If the design is based on systematic and/or managerial monitoring and oversight, the SWA will provide copies of anomaly detection reports and demonstrate the report production capability.

During onsite certification, the IV&V contractor, or other certifier, also will meet with a sample of managers and/or supervisors responsible for monitoring ongoing compliance to assess their level of training to monitor their employee's use of SSA information, and for reviewing reports and taking necessary action.

5. Management Oversight and Quality Assurance

The SWA must establish and/or maintain ongoing management oversight and quality assurance capabilities to ensure that only authorized employees have access to SSA information through the ICON system, and to ensure there is ongoing compliance with the terms of the SWA's data exchange agreement with SSA. The management oversight function must consist of one or more SWA management officials whose job functions include responsibility for assuring that access to and use of SSA information is appropriate for each employee position type for which access is granted.

This function also should include responsibility for assuring that employees granted access to SSA information receive adequate training on the sensitivity of the information, safeguards that must be followed, and the penalties for misuse, and should perform periodic self-reviews to monitor ongoing usage of the online access to SSA information. In addition, there should be the capability to randomly sample work activity involving online requests for SSA information to

determine whether the requests comply with these guidelines. These functions should be performed by SWA employees whose job functions are separate from those who request or use information from SSA.

Meeting this Requirement

The SWA must document that they will establish and/or maintain ongoing management oversight and quality assurance capabilities for monitoring the issuance and maintenance of user ID's for online access to SSA information, and oversight and monitoring of the use of SSA information within the SWA business process. The outside entity should describe how these functions will be performed within their organization and identify the individual(s) or component(s) responsible for performing these functions.

During onsite certification, the IV&V contractor, or other certifier, will meet with the individual(s) responsible for these functions and request a description of how these responsibilities will be carried out.

6. Security Awareness and Employee Sanctions

The SWA must establish and/or maintain an ongoing function that is responsible for providing security awareness training for employees that includes information about their responsibility for proper use and protection of SSA information, and the possible sanctions for misuse. Security awareness training should occur periodically or as needed, and should address the Privacy Act and other Federal and State laws governing use and misuse of protected information. In addition, there should be in place a series of administrative procedures for sanctioning employees who violate these laws through the unlawful disclosure of protected information.

Meeting this Requirement

The SWA must document that they will establish and/or maintain an ongoing function responsible for providing security awareness training for employees that includes information about their responsibility for proper use and protection of SSA information, and the possible sanctions for misuse of SSA information. The SWA should describe how these functions will be performed within their organization, identify the individual(s) or component(s) responsible for performing the functions, and submit copies of existing procedures, training material and employee acknowledgment statements.

During onsite certification, the IV&V contractor, or other certifier, will meet with the individuals responsible for these functions and request a description of how these responsibilities are carried out. The IV&V contractor, or other certifier, also will meet with a sample of SWA employees to assess their level of training and

understanding of the requirements and potential sanctions applicable to the use and misuse of SSA information.

7. Data and Communications Security

The encryption method employed must meet acceptable standards designated by the National Institute of Standards and Technology (NIST). The recommended encryption method to secure data in transport for use by SSA is the Advanced Encryption Standard (AES) or triple DES (DES3) if AES is unavailable.

D. Onsite Systems Security Certification Review

The SWA must obtain and participate in an onsite review and compliance certification of their security infrastructure and implementation of these security requirements prior to being permitted to submit online transaction to SSA through the ICON system. DOL will require an initial onsite systems security certification review to be performed by either an independent IV&V contractor, or other DOL approved certifier. The onsite certification will address each of the requirements described above and will include, where appropriate, a demonstration of the SWA's implementation of each requirement. The review will include a walkthrough of the SWA's data center to observe and document physical security safeguards, a demonstration of the SWA's implementation of online access to SSA information through the ICON system, and discussions with managers/supervisors. The IV&V contractor, or other certifier, also will visit at least one of the SWA's field offices to discuss the online access to SSA information with a sample of line workers and managers to assess their level of training and understanding of the proper use and protection of SSA information.

The IV&V contractor, or other certifier, will separately document and certify SWA compliance with each SSA security requirement. To fully comply with SSA's security requirements and be certified to connect to SSA through the ICON system, the SWA must submit to DOL a complete package of documentation as described above and a complete certification from an independent IV&V contractor, or other DOL approved certifier, that the SWA system design and infrastructure is in agreement with the SWA documentation and consistent with SSA requirements. Any unresolved or unimplemented security control features must be resolved by the SWA before DOL will authorize their connection to SSA through the ICON system.

Following initial certification and authorization from DOL to connect to SSA through the ICON system, SSA is responsible for future systems security compliance reviews. SSA conducts such reviews approximately once every three years, or as needed if there is a significant change in the SWA's computing platform, or if there is a violation of any of SSA's systems security requirements or an unauthorized disclosure of SSA information by the SWA. The format of those reviews generally consists of

reviewing and updating the SWA compliance with the systems security requirements described above.

SENSITIVE DOCUMENT

ATTACHMENT 4

**ELECTRONIC INFORMATION EXCHANGE SECURITY REQUIREMENTS
AND PROCEDURES**

(Technical Systems Security Requirements- TSSR)



**ELECTRONIC INFORMATION EXCHANGE SECURITY
REQUIREMENTS AND PROCEDURES
FOR
STATE AND LOCAL AGENCIES EXCHANGING ELECTRONIC
INFORMATION WITH THE SOCIAL SECURITY
ADMINISTRATION**

SENSITIVE DOCUMENT

**Version 7.0
July 2015**

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1. Introduction

Federal standards require the Social Security Administration (SSA) to maintain oversight of the information it provides to its **Electronic Information Exchange Partners (EIEPs)**. EIEPs must protect the information with efficient and effective security controls. EIEPs are entities that have electronic information exchange agreements with the agency.

This document consistently references the concept of **Electronic Information Exchange Partners (EIEP)**; however, our **Compliance Review Questionnaire (CRQ)** and **Security Design Plan (SDP)** documents will use the terms “**state agency**” or “**state agency, contractor(s), and agent(s)**” for clarity. Most state officials and agreement signatories are not familiar with the acronym EIEP; therefore, SSA will continue to use the terms “state agency” or “state agency, contractor(s), and agent(s)” in the same manner as the Computer Matching and Privacy Protection Act (CMPPA) and Information Exchange Agreements (IEA). This allows for easier alignment and mapping back to our data exchange agreements between state agencies and SSA. It will also provide a more “user-friendly” experience for the state officials who complete these forms on behalf of their state agencies.

The objective of this document is twofold. The first is to ensure that SSA can properly certify EIEPs as compliant with SSA security standards, requirements, and procedures. The second is to ensure that EIEPs adequately safeguard electronic information provided to them by SSA.

This document helps EIEPs understand the criteria that SSA uses when evaluating and certifying the system design and security features used for electronic access to SSA-provided information. Finally, this document provides the framework and general procedures for SSA’s Security Certification and Compliance Review Programs.

The primary statutory authority that supports the information contained in this document is the **Federal Information Security Management Act (FISMA)**. FISMA became law as part of the **Electronic Government Act of 2002**. FISMA is the United States legislation that defines a comprehensive framework to protect government information, operations, and assets against natural or manufactured threats. FISMA assigned the **National Institute of Standards and Technology (NIST)**, a branch of the U.S. Department of Commerce, the responsibility to outline and define compliance with FISMA. Unless otherwise stated, all of SSA’s requirements mirror the NIST-defined management, operational, and technical controls listed in the various NIST Special Publications (SP) libraries of technical guidance documents.

To gain electronic access to SSA-provided information, under the auspices of a data exchange agreement, EIEP’s must comply with SSA’s most current **Technical System Security Requirements** (hereafter referred to as **TSSRs**) to gain access to SSA-provided information. This document is **synonymous** with the **Electronic Information Exchange Security Requirements and Procedures for State and**

Local Agencies Exchanging Electronic Information with the Social Security Administration in the agreements. The TSSR specifies minimally acceptable levels of security standards and controls to protect SSA-provided information. SSA maintains the TSSR as a living document—subject to change--that addresses emerging threats, new attack methods and the development of new technology that potentially places SSA-provided information at risk. EIEPs may proactively ensure their ongoing compliance to the TSSR by periodically requesting the most current version from SSA. SSA will work with EIEPs to resolve deficiencies, which result from updates to the TSSRs. SSA refers to this process as **Gap Analysis**. EIEPs may proactively ensure their ongoing compliance with the TSSRs by periodically requesting the most current TSSR package from their SSA Point of Contact (POC) from the data exchange agreement.

SSA's standard for categorization of information (Moderate) and information systems is to provide appropriate levels of security according to risk level. Additions, deletions, or modification of security controls directly affect the level of security and due diligence SSA requires EIEPs use to mitigate risks. The emergence of new threats, attack methods, and the development of new technology warrants frequent reviews and revisions to our TSSR. Consequently, EIEPs should expect SSA's TSSR to evolve in harmony with the industry.

2. Electronic Information Exchange (EIE) Definition

For discussion purposes herein, EIE is any electronic process in which SSA discloses information under its control to any third party for program or non-program purposes, without the specific consent of the subject individual or any agent acting on his or her behalf. EIE involves individual data transactions and data files processed within the programmatic systems of parties to electronic information sharing agreements with SSA. This includes direct terminal access (DTA) to SSA systems, batch processing, and variations thereof (e.g., online query) regardless of the systematic method used to accomplish the activity or to interconnect SSA with the EIEP.

3. Roles and Responsibilities

The SSA *Office of Information Security (OIS)* has agency-wide responsibility for interpreting, developing, and implementing security policy; providing security and integrity review requirements for all major SSA systems; managing SSA's fraud monitoring and reporting activities, developing and disseminating security training and awareness materials, and providing consultation and support for a variety of agency initiatives. SSA's security reviews ensure that external systems receiving information from SSA are secure and operate in a manner consistent with SSA's Information Technology (IT) security policies and in compliance with the terms of electronic data exchange agreements executed by SSA with outside entities. Within the context of SSA's security policies and the terms of the electronic data exchange

agreements with SSA's EIEPs, SSA exclusively conducts and brings to closure initial security certifications and triennial security compliance reviews. This includes (but not limited to) any EIEP that processes, maintains, transmits, or stores SSA-provided information in accordance with pertinent Federal requirements.

- a. The SSA Regional **Data Exchange Coordinators** (DECs) serve as a bridge between SSA and EIEPs. DECs assist in coordinating data exchange security review activities with EIEPs; (e.g., providing points of contact with state agencies, assisting in setting up security reviews, etc.) DECs are also the first points of contact for states if an employee of a state agency or an employee of a state agency's contractor or agent becomes aware of suspected or actual loss of SSA-provided information.
- b. SSA requires **EIEPs** to adhere to the standards, requirements, and procedures, published in this TSSR document.
 - "Personally Identifiable Information (PII)," covered under several Federal laws and statutes, refers to specific information about an individual used to trace that individual's identity. Information such as his/her name, Social Security Number (SSN), date and place of birth, mother's maiden name, or biometric records, alone, or when combined with other personal or identifying information is linkable or lined to a specific individual's medical, educational, financial, and employment information.
 - The data (last 4 digits of the SSN) that SSA provides to its EIEPs for purposes of the Help America Vote Act (HAVA) does not identify a specific individual; therefore, is not "PII" as defined by the Act.
 - Both SSA and EIEPs must remain diligent in the responsibility for establishing *appropriate* management, operational, and technical safeguards to ensure the confidentiality, integrity, and availability of its records and to protect against any anticipated threats or hazards to their security or integrity.
- c. A State Transmission/Transfer Component (STC) is an organization that performs as an electronic information conduit or collection point for one of more other entities (also referred to as a hub). An STC must also adhere to the same management, operational and technical controls as SSA and the EIEP.

NOTE: Disclosure of Federal Tax Information (FTI) is limited to certain Federal agencies and state programs supported by federal statutes under Sections 1137, 453, and 1106 of the Social Security Act. For information regarding

safeguards for protecting FTI, consult IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

4. General Systems Security Standards

EIEPs that request and receive information electronically from SSA must comply with the following general systems security standards concerning access to and control of SSA-provided information.

NOTE: EIEPs may not create separate files or records comprised solely of the information provided by SSA.

1. EIEPs must ensure that means, methods, and technology used to process, maintain, transmit, or store SSA-provided information neither prevents nor impedes the EIEP's ability to:
 - safeguard the information in conformance with SSA requirements
 - efficiently investigate fraud, data breaches, or security events that involve SSA-provided information
 - detect instances of misuse or abuse of SSA-provided information

For example, Utilization of cloud computing may have the potential to jeopardize an EIEP's compliance with the terms of their agreement or associated systems security requirements and procedures.

2. The EIEP must use the electronic connection established between the EIEP and SSA only in support of the current agreement(s) between the EIEP and SSA.
3. The EIEP must use the software and/or devices provided to the EIEPs only in support of the current agreement(s) between the EIEPs and SSA.
4. SSA prohibits the EIEP from modifying any software or devices provided to the EIEPs by SSA.
5. EIEPs must ensure that SSA-provided information is not processed, maintained, transmitted, or stored in or by means of data communications channels, electronic devices, computers, or computer networks located in geographic or virtual areas not subject to U.S. law.
6. EIEPs must restrict access to the information to authorized users who need it to perform their official duties.

NOTE: Contractors and agents (hereafter referred to as contractors) of the EIEP who process, maintain, transmit, or store SSA-provided information are held to the same security requirements as employees of the EIEP. Refer to the section '[Contractors of Electronic Information Exchange Partners in the Systems Security Requirements](#) for additional information.

7. EIEPs must store information received from SSA in a manner that, at all times, is

physically and electronically secure from access by unauthorized persons.

8. The EIEP must process SSA-provided information under the immediate supervision and control of authorized personnel.
9. EIEPs must employ both physical and technological barriers to prevent unauthorized retrieval of SSA-provided information via computer, remote terminal, or other means.
10. EIEPs must have formal PII incident response procedures. When faced with a security incident, caused by malware, unauthorized access, software issues, or acts of nature, the EIEP must be able to respond in a manner that protects SSA-provided information affected by the incident.
11. EIEPs must have an active and robust security awareness program, which is mandatory for all employees who access SSA-provided information.
12. EIEPs must advise employees with access to SSA-provided information of the confidential nature of the information, the safeguards required to protecting the information, and the civil and criminal sanctions for non-compliance contained in the applicable Federal and state laws.
13. In accordance with the National Institute of Standards and Technology (NIST) Special Publication (SP) on Contingency Planning requirements and recommendations, SSA requires EIEPs to document a senior management approved Contingency plan that includes a disaster recovery plan that addresses both natural disaster and cyber-attack situations.
14. SSA requires the Contingency Plan to include details regarding the organizational business continuity plan (BCP) and a business impact analyses (BIA) that address the security of SSA-provided information if a disaster occurs.
15. At its discretion, SSA or its designee must have the option to conduct onsite security reviews or make other provisions, to ensure that EIEPs maintain adequate security controls to safeguard the information we provide.

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5. Systems Security Requirements

5.1 Overview

SSA's TSSR represent the current industry standard for security controls, safeguards, and countermeasures required for Federal information systems by Federal regulations, statutes, standards, and guidelines. Additionally, SSA's TSSR includes organizationally defined interpretations, policies, and procedures mandated by the authority of the Commissioner of Social Security in areas when or where other cited authorities may be silent or non-specific.

SSA must certify that the EIEP has implemented security controls that meet the requirements and work as intended, before the authorization to initiate transactions to and from SSA, through batch data exchange processes or online processes such as State Online Query (SOLQ) or Internet SOLQ (SOLQ-I).

The TSSR address management, operational, and technical controls regarding security safeguards to ensure only authorized disclosure and usage of SSA provided information used, maintained, transmitted, or stored by SSA's EIEPs. SSA requires EIEPs to maintain an organizational access control structure that adheres to a three-tiered best practices model. The SSA recommended model is "separation of duties," "need-to-know" and "least privilege."

SSA requires EIEPs to document and notify SSA prior to sharing SSA-provided information with another state entity, or to allow them direct access to their system. **This includes (but not limited to) law enforcement, other state agencies, and state organizations that perform audit, quality, or integrity functions.**

SSA recommends that the EIEP develop and publish a comprehensive Information Technology (IT) Systems Security Policy document that specifically addresses:

- 1) the classification of information processed and stored within the network,
- 2) management, operational, and technical controls to protect the information stored and processed within the network,
- 3) access to the various systems and subsystems within the network,
- 4) Security Awareness Training,

- 5) Employee and End User Sanctions Policy,
- 6) Contingency Planning and Disaster Recovery

- 7) Incident Response Policy, and

- 8) The disposal of protected information and sensitive documents derived from the system or subsystems on the network.

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**5.2 General System Security Design and Operating Environment
(Planning (PL) Family – (System Security Plan), Contingency Plan (CP)
Family, Physical and Environmental (PE) Family,
NIST SP 800-53 rev. 4)**

In accordance with the NIST suite of Special Publications (SP) (e.g., 800-53, 800-34, etc.), SSA requires the EIEP to maintain policies, procedures, descriptions, and explanations of their overall system design, configuration, security features, and operational environment. They should include explanations of how they conform to SSA's TSSRs. The EIEPs General System Security design and Operating Environment must also address:

- a) the operating environment(s) in which the EIEP will utilize, maintain, store, and transmit SSA-provided information,
- b) the business process(es) in which the EIEP will use SSA-provided information,
- c) the physical safeguards employed to ensure that unauthorized personnel, the public or visitors to the agency cannot access SSA-provided information,
- d) details of how the EIEP keeps audit information pertaining to the use and access to SSA-provided information and associated applications readily available,
- e) electronic safeguards, methods, and procedures for protecting the EIEP's network infrastructure and for protecting SSA-provided information while in transit, in use within a process or application, and at rest ,
- f) a senior management approved Information System Contingency Plan (ISCP) that addresses both internal and external threats. SSA requires the ISCP to include details regarding the organizational business continuity plan (BCP) and a business impact analyses (BIA) that addresses the security of SSA-provided information if a disaster occurs. SSA recommends that state agencies perform disaster exercises at least once annually.,

Exhibit E, Attachment B

- g) how the EIEP prevents unauthorized retrieval of SSA-provided information by computer, remote terminal, or other means; including descriptions of security software other than access control software (e.g., security patch and anti-malware software installation and maintenance, etc.)
- h) how the configurations of devices (e.g., servers, workstations, portable devices) involving SSA-provided information complies with recognized industry standards (i.e. NIST SP's) and SSA's TSSR, and
- i) organizational structure of the agency, number of users, and all external entities that will have access to the system and/or application that displays, transmits, and/or application that displays, transmits and/or stores SSA-provided information.

Note: At its discretion, SSA or a third party (i.e. contractor) must have the option to conduct onsite security reviews or make other provisions, to ensure that EIEPs maintain adequate security controls to safeguard the information we provide.

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5.3 System Access Control (Access Control (AC) Family, NIST SP 800-53 rev. 4)

EIEPs must utilize and maintain technological (logical) access controls that limit access to SSA-provided information and associated transactions and functions to only those users, processes acting on behalf of authorized users, or devices (including other information systems) authorized for such access based on their official duties or purpose(s). EIEPs must employ a recognized user-access security software package (e.g., RAC-F, ACF-2, TOP SECRET, Active Directory, etc.) or a security software design, which is equivalent to such products. The access control software must employ and enforce (1) PIN/password, and/or (2) PIN/biometric identifier, and/or (3) SmartCard/biometric identifier, etc., (for authenticating users), (and lower case letters, numbers, and special characters; password phrases) for the user accounts of persons, processes, or devices whose functions require access privileges in excess of those of ordinary users.

The EIEP's password policies must require stringent password construction as supported by current NIST guidelines for the user accounts of persons, processes, or devices whose functions require access privileges above those of ordinary users. **SSA strongly recommends Two-Factor Authentication.**

The EIEP's implementation of the control software must comply with recognized industry standards. Password policies should enforce sufficient construction strength (length and complexity) to defeat or minimize risk-based identified vulnerabilities and ensure limitations for password repetition. Technical controls should enforce periodic password changes based on a risk-based standard (e.g., maximum password age of 90 days, minimum password age of 3 – 7 days) and enforce automatic disabling of user accounts that have been inactive for a specified period of time (e.g., 90 days).

The EIEP's password policies must require stringent password construction (e.g., passwords greater than eight characters in length requiring upper and lower case letters, numbers, and/or special characters; password phrases) for the user accounts of persons, processes, or devices whose functions require access privileges in excess of those of ordinary users.

In addition, SSA has the following specific requirements in the area of Access Control:

1. Upon hiring or before granting access to SSA-provided information, EIEPs should verify the identities of any employees, contractors, and agents who will have access to SSA-provided information in accordance with the applicable agency or state's "personnel identity verification policy."
2. SSA requires that state agencies have a logical control feature that designates a maximum number of unsuccessful login attempts for agency workstations and devices that store or process SSA-provided information, in accordance with NIST guidelines. SSA recommends no fewer than three (3) and no greater than five (5)..
3. SSA requires that the state agency designate specific official(s) or functional component(s) to issue PINs, passwords, biometric identifiers, or Personal Identity Verification (PIV) credentials to individuals who will access SSA-provided information. **SSA also requires that the state agency prohibit any functional component(s) or official(s) from issuing credentials or access authority to themselves or other individuals within their job-function or category of access.**
4. SSA requires that EIEPs grant access to SSA-provided information based on least privilege, need-to-know, and separation of duties. State agencies should not routinely grant employees, contractors, or agents access privileges that exceed the organization's business needs. SSA also requires that EIEPs periodically review employees, contractors, and agent's system access to determine if the same levels and types of access remain applicable.
5. If an EIEP employee, contractor, or agent is subject to an adverse administrative action by the EIEP (e.g., reduction in pay, disciplinary action, termination of employment), SSA recommends the EIEP remove his or her access to SSA-provided information in advance of the adverse action to reduce the possibility that will the employee will perform unauthorized activities that involve SSA-provided information.

6. SSA requires that work-at-home, remote access, and/or Internet access comply with applicable Federal and state security policy and standards. Furthermore, the EIEPs access control policy must define the safeguards in place to adequately protect SSA-provided information for work-at-home, remote access, and/or Internet access.

7. SSA requires EIEPs to design their system with logical control(s) that prevent unauthorized browsing of SSA-provided information. SSA refers to this setup as a **Permission Module**. The term “**Permission Module**” supports a business rule and systematic control that prevents users from browsing a system that contains SSA-provided information. It also supports the principle of **referential integrity**. It should prevent non-business related or unofficial access to SSA-provided information. Before a user or process requests SSA-provided information for verification, the system should verify it is an authorized transaction. Some organizations use the term “referential integrity” to describe the verification step. A properly configured Permission Module should prevent a user from performing any actions not consistent with a need-to-know business process. If a logical permission module configuration is not possible, the state agency must enforce its Access Control List (ACL) in accordance with the principle of least privilege. **The only acceptable compensating control for a system that lacks a permission module is a 100% review of all transactions that involve SSA-provided information.**

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5.4 Automated Audit Trail

(Audit and Accountability (AU) Family, NIST SP 800-53 rev. 4)

SSA requires EIEPs, and other STCs or agencies that provide audit trail services to other state agencies that receive information electronically from SSA, to implement and maintain a fully automated audit trail system (ATS). The system must be capable of creating, storing, protecting, and (efficiently) retrieving and collecting records identifying the individual user who initiates a request for information from SSA or accesses SSA-provided information. At a minimum, individual audit trail records must contain the data needed (including date and time stamps) to associate each query transaction or access to SSA-provided information with its initiator, their action, if any, and the relevant business purpose/process (e.g., SSN verification for Medicaid). Each entry in the audit file must be stored as a separate record, not overlaid by subsequent records. The ATS must create transaction files to capture all input from interactive internet applications that access or query SSA-provided information.

SSA requires that the agency's ATS create an audit record when users view screens that contain SSA-provided information. If an STC handles and audits the EIEP's transactions with SSA, the EIEP is responsible for ensuring that the STC's audit capabilities meet NIST's guidelines for an automated audit trail system. The EIEP must also establish a process to obtain specific audit information from the STC regarding the EIEP's SSA transactions.

SSA requires that EIEPs have automated retrieval and collection of audit records. Such automated functions can be via online queries, automated reports, batch processing, or any other logical means of delivering audit records in an expeditious manner. Information in the audit file must be retrievable by an automated method and must allow the EIEP the capability to make them available to SSA upon request.

Access to the audit file must be restricted to authorized users with a "need to know," audit file data must be unalterable (read-only), and maintained for a minimum of three (3) (preferably seven (7)) years. Information in the audit file must be retrievable by an automated method and must allow the EIEP the capability to make them available to SSA upon request. The EIEP must backup audit trail records on a regular basis to ensure its availability. EIEPs must apply the same level of protection to backup audit files that apply to the original files to ensure the integrity of the data.

If the EIEP retains SSA-provided information in a database (e.g., Access database, SharePoint, etc.), or if certain data elements within the EIEP's system indicates to users that SSA verified the information, the EIEP's system must also capture an audit trail record of users who view SSA-provided information stored within the EIEP's system. The retrieval requirements for SSA-provided information at rest and the retrieval requirements for regular transactions are identical. **Similar to the Permission Module requirement above, the only acceptable compensating control for a system that lacks an Automated Audit Trail System (ATS) is a 100% review of all transactions that involve SSA-provided information.**

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5.5 Personally Identifiable Information (PII)

(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and AP Family – Authority and Purpose (Privacy Controls), NIST SP 800-53 rev. 4)

Personally Identifiable Information (PII) is information used to distinguish or trace an individual's identity, such as their name, Social Security Number, biometric records, alone or when combined with other personal or identifying information linked or linkable to a specific individual. An item such as date and place of birth, mother's maiden name, or father's surname is PII, regardless of whether combined with other data.

SSA defines **a PII loss** as a circumstance when an EIEP employee, contractor, or agent has reason to believe that information on hard copy or in electronic format, which contains PII provided by SSA, left the EIEP's custody or the EIEP disclosed it to an unauthorized individual or entity. PII loss is a reportable incident. SSA requires that contracts for periodic disposal/destruction of case files or other print media contain a non-disclosure agreement signed by all personnel who will encounter products that contain SSA-provided information.

If a PII loss involving SSA-provided information occurs or is suspected, the EIEP must be able to quantify the extent of the loss and compile a complete list of the individuals potentially affected by the incident (refer to [**Incident Reporting**](#)).

The EIEP should have procedural documents to describe methods and controls for safeguarding SSA-provided PII while in use, at rest, during transmission, or after archiving. The document should explain how the EIEP manages and handles SSA-provided information on print media and explain how the methods and controls conform to NIST requirements. SSA requires that printed items that contain SSA-provided PII always remain in the custody of authorized EIEP employees, contractors, or agents. SSA also requires that the agency destroy the items when no longer required for the EIEP's business process. If retained in paper files for evidentiary purposes, the EIEP should safeguard such PII in a manner that prevents unauthorized personnel from accessing such materials. All agencies that receive SSA-provided information must maintain an inventory of all documents that outline statewide or agency policy and procedures regarding the same.

5.6 Monitoring and Anomaly Detection

(Information Security Continuous Monitoring (ISCM) for Federal Information Systems and Organizations, NIST SP 800-137, E-Government Act of 2002 (P.L. 107-347), and Security Assessment and Authorization (CA) and Risk Assessment (RA) Families, NIST SP 800-53 rev. 4)

SSA requires that the EIEPs use an Intrusion Protection System (IPS) or an Intrusion Detection System (IDS). The EIEP must establish and/or maintain continuous monitoring of its network infrastructure and assets to ensure that:

- 1) the EIEP's security controls continue to be effective over time,
- 2) the EIEP uses industry-standard Security Information Event Manager (SIEM) tools, anti-malware software, and effective antivirus protection,
- 3) only authorized individuals, devices, and processes have access to SSA-provided information,
- 4) the EIEP detects efforts by external and internal entities, devices, or processes to perform unauthorized actions (e.g., data breaches, malicious attacks, access to network assets, software/hardware installations, etc.) as soon as they occur,
- 5) the necessary parties are immediately alerted to unauthorized actions performed by external and internal entities, devices, or processes,
- 6) upon detection of unauthorized actions, measures are immediately initiated to prevent or mitigate associated risk,
- 7) in the event of a data breach or security incident, the EIEP can efficiently determine and initiate necessary remedial actions, and
- 8) trends, patterns, or anomalous occurrences and behavior in user or network activity that may be indicative of potential security issues are readily discernible.

The EIEP's system must include the capability to prevent users from unauthorized browsing of SSA records. SSA requires the use of a transaction-driven **permission module design**, whereby employees are unable to initiate transactions not associated with the normal business process. If the EIEP uses such a design, they also must have anomaly detection to monitor an employee's unauthorized attempts to gain access to SSA-provided information and attempts to obtain information from SSA for clients not in the EIEP's client system. The EIEP should employ measures to ensure the permission module's integrity. Users should not be able to create a bogus case and subsequently delete it in such a manner that it goes undetected. The SSA permission module design employs both role and rules based logical access control restrictions. (Refer to [Access Control](#))

If the EIEP's design **does not use** a permission module **and** is not transaction-driven, until at least one of these security features exists, the EIEP must develop and implement **compensating security controls** to deter employees from browsing SSA records. These controls must include monitoring and anomaly detection features, such as: systematic, manual, or a combination thereof. Such features must include the capability to detect anomalies in the volume and/or type of transactions or queries requested or initiated by individuals and include systematic or manual procedures for verifying that requests and queries of SSA-provided information comply with valid official business purposes.

Risk Management Program

SSA recommends that EIEPs develop and maintain a published Risk Assessment Policy and Procedures document. A Risk Management Program may include, but is not limited to the following:

1. A risk assessment policy that addresses purpose, scope, roles, responsibilities, management commitment, coordination among organizational entities, and compliance,
2. Procedures to facilitate the implementation of the risk assessment policy and associated risk assessment controls,
3. A function that conducts an assessment of risk, including the likelihood and magnitude of harm, from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information system and the information it processes, stores, or transmits,
4. An independent function that conducts vulnerability and risk assessments, reviews risk assessment results, and disseminates such information to senior management,
5. A firm commitment from senior management to update the risk assessment whenever there are significant changes to the information

system or environment of operation or other conditions that may affect the security of SSA-provided information,

6. A robust vulnerability scanning protocol that employs industry standard scanning tools and techniques that facilitate interoperability among tools and automates parts of the vulnerability management process,
7. Remediates legitimate vulnerabilities in accordance with an organizational assessment of risk, and
8. Shares information obtained from the vulnerability scanning process and security control assessments with senior management to help eliminate similar vulnerabilities in other information systems that receive, process, transmit, or store SSA-provided information.

Note: The EIEP's decision to initiate or maintain an official Risk Management Program and establish a formal Risk Assessment Strategy for mitigating risk is strictly voluntary, but highly recommended by SSA.

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5.7 Management Oversight and Quality Assurance

(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and the AC – Access Control & PM – Program Management Families, NIST SP 800-53 rev. 4)

SSA requires the EIEP to establish and/or maintain ongoing management oversight and quality assurance capabilities to ensure that only authorized users have access to SSA-provided information. This will ensure there is ongoing compliance with the terms of the EIEP's electronic information sharing agreement with SSA and the TSSRs established for access to SSA-provided information. The entity responsible for management oversight should consist of one or more of the EIEP's management officials whose job functions include responsibility to ensure that the EIEP only grants access to the appropriate users and position types (least privilege), which require the SSA-provided information to do their jobs (need-to-know).

SSA requires the EIEP to ensure that users granted access to SSA-provided information receive adequate training on the sensitivity of the information, associated safeguards, operating procedures, and the civil and criminal consequences or penalties for misuse or improper disclosure.

SSA requires that EIEPs establish the following job functions and require that only users whose job functions are separate from personnel who request or use SSA-provided information.

SSA requires that EIEPs establish the following job functions separate from personnel who request or use SSA-provided information.

- a) Perform periodic self-reviews to monitor the EIEP's ongoing usage of SSA-provided information.
- b) Perform random sampling of work activity that involves SSA-provided information to determine if the access and usage comply with SSA's requirements

SSA requires the EIEP's system to produce reports that allow management and/or supervisors to monitor user activity. The EIEP must have a process for distributing these monitoring and exception reports to appropriate local managers/supervisors or to local security officers. The process must ensure that only those whose responsibilities include monitoring anomalous activity of users, to include those who have exceptional system rights and privileges, use the reports.

1. User ID Exception Reports:

This type of report captures information about users who enter incorrect user IDs when attempting to gain access to the system or to a transaction that initiates requests for information from SSA, including failed attempts to enter a password.

2. Inquiry Match Exception Reports:

This type of report captures information about users who initiate transactions for SSNs that have no client case association within the EIEP's system **(the EIEP's management must review 100% of these cases)**.

3. System Error Exception Reports:

This type of report captures information about users who may not understand or may be violating proper procedures for access to SSA-provided information.

4. Inquiry Activity Statistical Reports:

This type of report captures information about transaction usage patterns among authorized users and is a tool that enables the EIEP's management to monitor typical usage patterns in contrast to extraordinary usage patterns.

The EIEP must have a process for distributing these monitoring and exception reports to appropriate local managers/supervisors or to local security officers. The process must ensure that only those whose responsibilities include monitoring anomalous activity of users, to include those who have exceptional system rights and privileges, use the reports.

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5.8 Data and Communications Security

(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and the Access Control (AC), Configuration Management (CM), Media Protection (MP), and System and Communication (SC) Families, NIST SP 800-53 rev. 4)

SSA requires EIEPs to encrypt PII and SSA-provided information when transmitting across dedicated communications circuits between its systems, intrastate communications between its local office locations, and on the EIEP's mobile computers, devices and removable media. The EIEP's encryption methods must align with the Guidelines established by the National Institute of Standards and Technology (NIST). SSA recommends the Advanced Encryption Standard (AES) or Triple DES (Data Encryption Standard 3).

Files encrypted for external users (when using tools such as Microsoft Word encryption,) require a key length of at least nine characters. SSA recommends that the key (also referred to as a password) contain both special characters and numbers. SSA supports the NIST Guidelines that requires the EIEP deliver the key so that it does not accompany the media. The EIEP must secure the key when not in use or unattended.

SSA discourages the use of the public Internet for transmission of SSA-provided information. If, however, the EIEP uses the public Internet or other electronic communications, such as emails and faxes to transmit SSA-provided information, they must use a secure encryption protocol such as Secure Socket Layer (SSL) or Transport Layer Security (TLS). SSA also recommends 256-bit encryption protocols or more secure methods such as Virtual Private Network technology. The EIEP should only send data to a secure address or device to which the EIEP can control and limit access to only specifically authorized individuals and/or processes. **SSA recommends that EIEPs use Media Access Control (MAC) Filtering and Firewalls to protect access points from unauthorized devices attempting to connect to the network.**

EIEPs should not retain SSA-provided information any longer than business purpose(s) dictate. The IEA with SSA stipulates a time for data retention. The EIEP should delete, purge, destroy, or return SSA-provided information when the business purpose for retention no longer exists.

The EIEP may not save or create separate files comprised solely of information provided by SSA. The EIEP may apply specific SSA-provided information to the EIEP's matched record from a preexisting data source. Federal law prohibits duplication and redisclosure of SSA-provided information without written approval from SSA.

This prohibition applies to both internal and external sources who do not have a “need-to-know.” SSA recommends that EIEPs use either **Trusted Platform Module (TPM)** or **Hardware Security Module (HSM)** technology solutions to encrypt data at rest on hard drives and other data storage media.

SSA requires EIEPs to prevent unauthorized disclosure of SSA-provided information after they complete processing and after the EIEP no longer requires the information. The EIEP’s operational processes must ensure that no residual SSA-provided information remains on the hard drives of user’s workstations after the user exits the application(s) that use SSA-provided information. If the EIEP must send a computer, hard drive, or other computing or storage device offsite for repair, the EIEP must have a non-disclosure clause in their contract with the vendor. If the EIEP used the item in connection with a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the EIEP’s vendor contract. The EIEP must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the EIEP to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.

To sanitize media, the EIEP should use one of the following methods:

1. **Overwriting/Clearing:**

Overwrite utilities can only be used on working devices. Overwriting is appropriate only for devices designed for multiple reads and writes. The EIEP should overwrite disk drives, magnetic tapes, floppy disks, USB flash drives, and other rewriteable media. The overwrite utility must completely overwrite the media. SSA recommends the use of **purging** media sanitization to make the data irretrievable, protecting data against laboratory attacks or forensics. Reformatting the media does not overwrite the data.

2. **Degaussing:**

Degaussing is a sanitization method for magnetic media (e.g., disk drives, tapes, floppies, etc.). Degaussing is not effective for purging non-magnetic media (e.g., optical discs). SSA and NIST Guidelines require EIEP to use a certified tool designed to degauss each particular type of media. NIST guidelines require certification of the tool to ensure that the magnetic flux applied to the media is strong enough to render the information irretrievable. The degaussing process must render data on the media irretrievable by a laboratory attack or laboratory forensic procedures.

3. **Physical destruction:**

NIST guidelines require physical destruction when degaussing or overwriting cannot be accomplished (for example, CDs, floppies, DVDs, damaged tapes, hard drives, damaged USB flash drives, etc.). Examples of physical destruction include shredding, pulverizing, and burning.

State agencies may retain SSA-provided information in hardcopy only if required to fulfill evidentiary requirements, provided the agencies retire such data in accordance with applicable state laws governing state agency's retention of records. The EIEP must control print media containing SSA-provided information to restrict access to authorized employees who need such access to perform official duties. EIEPs must destroy print media containing SSA-provided information in a secure manner when no longer required for business purposes. SSA requires the EIEP to destroy paper documents that contain SSA-provided information by burning, pulping, shredding, macerating, or other similar means that ensure the information is unrecoverable.

State agencies may use any accretions, deletions, or changes to the SSA-provided information governed by the CMPPA agreement to update their master files or federally funded state-administered benefit program applicants and recipients and retain such master files in accordance with applicable state laws governing State Agencies' retention of records.

NOTE: Hand tearing or lining through documents to obscure information does not meet SSA's requirements for appropriate destruction of PII.

The EIEP must employ measures to ensure that communications and data furnished to SSA contain no viruses or other malware.

Special Note regarding Cloud Service Providers:

If the EIEP will store SSA-provided information through a Cloud Service Provider, please provide the name and address of the cloud provider. Describe the security responsibilities the contract requires to protect SSA-provided information.

SSA will ask for detailed descriptions of the security features contractually required of the cloud provider and information regarding how they will protect SSA-provided information at rest and when in transit.

EIEPs cannot legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer.

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5.9 Incident Reporting

(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and the Incident Response (IR) Family, NIST SP 800-53 rev. 4)

FISMA, NIST Guidelines, and Federal Law require the EIEP to develop and implement policies and procedures to respond to potential data breaches or PII losses. EIEPs must articulate, in writing, how the policies and procedures conform to SSA's requirements. The procedures must include the following information:

*If your agency experiences or suspects a breach or loss of PII or a security incident, which includes SSA-provided information, they must notify the State official responsible for Systems Security designated in the agreement. That State official or delegate must then notify the SSA Regional Office Contact or the SSA Systems Security Contact identified in the agreement. If, for any reason, the responsible State official or delegate is unable to notify the SSA Regional Office or the SSA Systems Security Contact **within one hour**, the responsible State Agency official or delegate must report the incident by contacting **SSA's National Network Service Center (NNSC) toll free at 877-697-4889** (select "Security and PII Reporting" from the options list). The EIEP will provide updates as they become available to SSA contact, as appropriate. Refer to the worksheet provided in the agreement to facilitate gathering and organizing information about an incident.*

If SSA, or another Federal investigating entity (e.g. TIGTA or DOJ), determines that the risk presented by a breach or security incident requires that the state agency notify the subject individuals, the agency must agree to absorb all costs associated with notification and remedial actions connected to security breaches. **SSA and NIST Guidelines encourage agencies to consider establishing incident response teams to address PII and SSA-provided information breaches.**

Incident reporting policies and procedures are part of the security awareness program. Incident reporting pertains to all employees, contractors, or agents regardless as to whether they have direct responsibility for contacting SSA. The written policy and procedures document should include specific names, titles, or functions of the individuals responsible for each stage of the notification process. The document should include detailed instructions for how, and to whom each employee, contractor, or agent should report the potential breach or PII loss.

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5.10 Security Awareness Training and User Sanctions

(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and Awareness and Training (AT), Personnel Security (PS), and Program Management (PM) Families, NIST SP 800-53 rev. 4)

The EIEP must have an active and robust security awareness program and security training for all employees, contractors, and agents who access SSA-provided information. The training and awareness programs must include:

- a. the sensitivity of SSA-provided information and addresses the Privacy Act and other Federal and state laws governing its use and misuse,
- b. the rules of behavior concerning use and security in systems and/or applications processing SSA-provided information,
- c. the restrictions on viewing and/or copying SSA-provided information,
- d. the responsibilities of employees, contractors, and agent's pertaining to the proper use and protection of SSA-provided information,
- e. the proper disposal of SSA-provided information,
- f. the security breach and data loss incident reporting procedures,
- g. the basic understanding of procedures to protect the network from malware attacks,
- h. spoofing, phishing and pharming, and network fraud prevention, and
- i. the possible criminal and civil sanctions and penalties for misuse of SSA-provided information.

SSA requires the EIEP to provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. SSA also requires the EIEP to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful access and/or disclosure.

SSA requires the EIEP to provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. SSA also requires the EIEP to certify that each employee, contractor, or agent who views SSA-provided information also certify that they understand the potential criminal and administrative sanctions or penalties for unlawful disclosure. SSA requires the state agency to require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. The non-disclosure attestation must also include acknowledgement from each employee, contractor, and agent that he or she understands and accepts the potential criminal and/or civil sanctions or penalties associated with misuse or unauthorized disclosure of SSA-provided information. The state agency must retain the non-disclosure attestations for at least five (5) to seven (7) years for each individual who processes, views, or encounters SSA-provided information as part of their duties.

SSA strongly recommends the use of login banners, emails, posters, signs, memoranda, special events, and other promotional materials to encourage security awareness throughout your enterprise.

The state agency must designate a department or party to take the responsibility to provide ongoing security awareness training for all employees, contractors, and agents who access SSA-provided information. Training must include:

- The sensitivity of SSA-provided information and address the Privacy Act and other Federal and state laws governing its use and misuse
- Rules of behavior concerning use and security in systems processing SSA-provided information
- Restrictions on viewing and/or copying SSA-provided information
- The employee, contractor, and agent's responsibility for proper use and protection of SSA-provided information
- Proper disposal of SSA-provided information
- Security incident reporting procedures
- Basic understanding of procedures to protect the network from malware attacks

Exhibit E, Attachment B

- Spoofing, Phishing and Pharming scam prevention
- The possible sanctions and penalties for misuse of SSA-provided information

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5.11 Contractors of Electronic Information Exchange Partners
(The Privacy Act of 1974, E-Government Act of 2002 (P.L. 107-347), and Risk Assessment (RA), System and Services Acquisition (SA), Awareness and Training (AT), Personnel Security (PS), and Program Management (PM) Families, NIST SP 800-53 rev. 4)

The state agency's employees, contractors, and agents who access, use, or disclose SSA data in a manner or purpose not authorized by the Agreement may be subject to both civil and criminal sanctions pursuant to applicable Federal statutes. The state agency will provide its contractors and agents with copies of the Agreement, related IEAs, and all related attachments before initial disclosure of SSA data to such contractors and agents. Prior to signing the Agreement, and thereafter at SSA's request, the state agency will obtain from its contractors and agents a current list of the employees of such contractors and agents with access to SSA data and provide such lists to SSA.

Contractors of the state agency must adhere to the same security requirements as employees of the state agency. The state agency is responsible for the oversight of its contractors and the contractor's compliance with the security requirements. The state agency must enter into a written agreement with each of its contractors and agents who need SSA data to perform their official duties. Such contractors or agents agree to abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within the state agency's agreement with SSA.

The state agency must provide proof of the contractual agreement with all contractors and agents who encounter SSA-provided information as part of their duties. If the contractor processes, handles, or transmits information provided to the state agency by SSA or has authority to perform on the state agency's behalf, the state agency should clearly state the specific roles and functions of the contractor within the agreement. The state agency will provide SSA written certification that the contractor is meeting the terms of the agreement, including SSA security requirements. The service level agreements with the contractors and agents must contain non-disclosure language as it pertains to SSA-provided information.

The state agency must also require that contractors and agents who will process, handle, or transmit information provided to the state agency by SSA to include language in their signed agreement that obligates the contractor to follow the terms of the state agency's data exchange agreement with SSA. The state agency must also make certain that the contractor and agent's employees receive the same security awareness training as the state agency's employees. The state agency, the contractor, and the agent should maintain awareness-training records for their employees and require the same mandatory annual

certification procedures.

SSA requires the state agency to subject the contractor to ongoing security compliance reviews that must meet SSA standards. The state agency will conduct compliance reviews at least triennially commencing no later than three (3) years after the approved initial security certification to SSA. The state agencies will provide SSA with documentation of their recurring compliance reviews of their contractors and agents. The state agencies will provide the documentation to SSA during their scheduled compliance and certification reviews or upon SSA's request.

If the state agency's contractor will be involved with the processing, handling, or transmission of information provided to the EIEP by SSA offsite from the EIEP, the EIEP must have the contractual option to perform onsite reviews of that offsite facility to ensure that the following meet SSA's requirements:

- a) safeguards for sensitive information,
- b) technological safeguards on computer(s) that have access to SSA-provided information,
- c) security controls and measures to prevent, detect, and resolve unauthorized access to, use of, and redisclosure of SSA-provided information, and
- d) continuous monitoring of the EIEP contractors or agent's network infrastructures and assets.

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5.12 Cloud Service Providers (CSP) for Electronic Information Exchange Partners
(NIST SP 800-144, NIST SP 800-145, NIST SP 800-146, OMB Memo M-14-03, NIST SP 137)

The National Institute of Standards and Technology (NIST) Special Publication (SP) 800-145 defines Cloud Computing as “a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.” The three service models, as defined by NIST SP 800-145 are Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS). The Deployment models are Private Cloud, Community Cloud, Public Cloud, and Hybrid Cloud. Furthermore, The Federal Risk and Authorization Program (FedRAMP) is a risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

SSA requires the State Agency, contractor(s), and agent(s) to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.

SSA requires the State Agency, contractor(s), and agent(s) to agree that any state-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a “de facto” extension of the State Agency and is subject to onsite inspection and review by the State Agency or SSA with prior notice.

SSA requires that the State Agency thoroughly describe all specific contractual obligations of each party to the Cloud Service Provider (CSP) agreement between the state agency and the CSP vendor(s). If the obligations, services, or conditions widely differ from agency to agency, we require separate SDP Questionnaires to address the CSP services provided to each state agency involved in the receipt, processing, storage, or disposal of SSA-provided information.

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6. Security Certification and Compliance Review Programs *(NIST SP 800-18 – System Security Plans and Planning (PL) Family, NIST SP 800-53 rev. 4)*

SSA's security certification and compliance review programs are distinct processes. The certification program is a unique episodic process when an EIEP initially requests electronic access to SSA-provided information or makes substantive changes to existing exchange protocol, delivery method, infrastructure, or platform. The certification process entails two stages (refer to 6.1 for details) intended to ensure that management, operational, and technical security measures work as designed. SSA must ensure that the EIEPs fully conform to SSA's security requirements at the time of certification and satisfy both stages of the certification process before SSA will permit online access to its data in a production environment.

The compliance review program entails cyclical security review of the EIEP performed by, or on behalf of SSA. The purpose of the review is to assess an EIEP's conformance to SSA's current security requirements at the time of the review engagement. The compliance review program applies to both online and batch access to SSA-provided information. Under the compliance review program, EIEPs are subject to ongoing and periodic security reviews by SSA.

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6.1 The Security Certification Program
(NIST SP 800-18 – System Security Plans, Security Assessment and Authorization Controls (CA), and Planning (PL) Families, NIST SP 800-53 rev. 4)

The security certification process applies to EIEPs that seek online electronic access to SSA-provide information and consists of two general phases:

- a) **Phase 1:** The Security Design Plan (SDP) is a formal written plan authored by the EIEP to document its management, operational, and technical security controls to safeguard SSA-provided information (refer to [Documenting Security Controls in the Security Design Plan](#)).

NOTE: SSA may have legacy EIEPs (EIEPs not certified under the current process) who have not prepared an SDP. SSA strongly recommends that these EIEPs prepare an SDP.

The EIEP's preparation and maintenance of a current SDP will aid them in determining potential compliance issues prior to reviews, assuring continued compliance with SSA's TSSRs, and providing for more efficient security reviews.

- b) **Phase 2:** The SSA Onsite Certification is a formal security review conducted by SSA, or on its behalf, to examine the full suite of management, operational, and technical security controls implemented by the EIEP to safeguard data obtained from SSA electronically (refer to [The Certification Process](#)).

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6.2 Documenting Security Controls in the SDP

(NIST SP 800-18 – System Security Plans, Security Assessment and Authorization Controls (CA), and Planning (PL) Families, NIST SP 800-53 rev. 4)

6.2.1 When an SDP is required:

EIEPs must submit an SDP when one or more of the following circumstances apply:

- a) to obtain approval for requested access to SSA-provided information for an initial agreement,
- b) to obtain approval to reestablish previously terminated access to SSA-provided information,
- c) to obtain approval to implement a new operating or security platform that will involve SSA-provided information,
- d) to obtain approval for significant changes to the EIEP's organizational structure, technical processes, operational environment, or security implementations planned or made since approval of their most recent SDP or of their most recent successfully completed security review,
- e) to confirm compliance when one or more security breaches or incidents involving SSA-provided information occurred since approval of the EIEP's most recent SDP or of their most recent successfully completed security review,
- f) to document descriptions and explanations of measures implemented as the result of a data breach or security incident,
- g) to document descriptions and explanations of measures implemented to resolve non-compliance issue(s), and
- h) to obtain a new approval after SSA revoked approval of the most recent SDP

SSA may require a new SDP if changes occurred (other than those listed above) that may affect the terms of the EIEP's data exchange agreement with SSA.

SSA will not approve the SDP or allow the initiation of transactions and/or access to SSA-provided information before the EIEP complies with the TSSRs.

NOTE: EIEPs that function only as an STC, transferring SSA-provided information to other EIEPs must, per the terms of their agreements with SSA, adhere to SSA's TSSR and exercise their responsibilities regarding protection of SSA-provided information. (See Page 48 Definition of STC)

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6.3 The Certification Process
(NIST SP 800-18 – System Security Plans, Security Assessment and Authorization Controls (CA), and Planning (PL) Families, NIST SP 800-53 rev. 4)

Once the EIEP has successfully satisfied Phase 1, SSA will conduct an onsite certification review. The objective of the onsite review is to ensure the EIEP's management, operational, and technical controls safeguarding SSA-provided information from misuse and improper disclosure and that those safeguards function and work as intended.

At its discretion, SSA may request the EIEP to participate in an onsite review and compliance certification of their security infrastructure.

The onsite review may address any or all of SSA's security requirements and include, when appropriate:

- 1) a demonstration of the EIEP's implementation of each security requirement,
- 2) a physical review of pertinent supporting documentation to verify the accuracy of responses in the SDP,
- 3) a demonstration of the functionality of the software interface for the system that will receive, process, and store SSA-provided information,
- 4) a demonstration of the Automated Audit Trail System (ATS),
- 5) a walkthrough of the EIEP's data center to observe and document physical security safeguards,
- 6) a demonstration of the EIEP's implementation of electronic exchange of data with SSA,
- 7) a discussions with managers, supervisors, information security officers, system administrators, or other state stakeholders,
- 8) an examination of management control procedures and reports pertaining to anomaly detection or anomaly prevention,
- 9) a demonstration of technical tools pertaining to user access control and, if appropriate, browsing prevention,

- 10) a demonstration of the permission module or similar design, to show how the system triggers requests for information from SSA,
- 11) a demonstration of how the process for requests for SSA-provided information prevents SSNs not present in the EIEP's system from sending requests to SSA.

We may attempt to obtain information from SSA using at least one, randomly created, fictitious number not known to the EIEPs system.

During a certification or compliance review, SSA or a certifier acting on its behalf, may request a demonstration of the EIEP's ATS and its record retrieval capability. SSA or a certifier may request a demonstration of the ATS' capability to track the activity of employees who have the potential to access SSA-provided information within the EIEP's system. The certifier may request more information from those EIEPs who use an STC to handle and audit transactions. SSA or a certifier may conduct a demonstration to see how the EIEP obtains audit information from the STC regarding the EIEP's SSA transactions.

If an STC handles and audits an EIEP's transactions, SSA requires the EIEP to demonstrate both their in-house audit capabilities and the process used to obtain audit information from the STC.

If the EIEP employs a contractor or agent who processes, handles, or transmits the EIEP's SSA-provided information offsite, SSA, at its discretion, may request to include the contractor's facility in the onsite certification review. The inspection may occur with or without a representative of the EIEP.

Upon successful completion of the onsite certification review, SSA will authorize electronic access to production data by the EIEP. SSA will provide written notification of its certification to the EIEP and all appropriate internal SSA components.

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6.5 The Compliance Review Program and Process *(NIST SP 800-18 – System Security Plans, Configuration Management (CM), Security Assessment and Authorization Controls (CA), and Planning (PL) Families, NIST SP 800-53 rev. 4)*

Similar to the certification process, the compliance review program entails a process intended to ensure that EIEPs that receive electronic information from SSA are in full compliance with the SSA's TSSRs. SSA requires EIEPs to complete and submit (based on a timeline agreed upon by SSA and EIEP's stakeholders) a Compliance Review Questionnaire (CRQ). The CRQ (similar to the SDP), describes the EIEP's management, operational, and technical controls used to protect SSA-provided information from misuse and improper disclosure. We also want to verify that those safeguards function and work as intended.

As a practice, SSA attempts to conduct compliance reviews following a 3-5 year periodic review schedule. However, as circumstances warrant, a review may take place at any time. Three prominent examples that would trigger an ad hoc review are:

- A. a significant change in the outside EIEP's computing platform,
- B. a violation of any of SSA's TSSRs, or
- C. an unauthorized disclosure of SSA-provided information by the EIEP.

SSA may conduct onsite compliance reviews and include both the EIEP's main facility and a field office.

SSA may, at its discretion, request that the EIEP participate in an onsite compliance review of their security infrastructure to confirm the implementation of SSA's security requirements.

The onsite review may address any or all of SSA's security requirements and include, where appropriate:

- D. a demonstration of the EIEP's implementation of each requirement
- E. a random sampling of audit records and transactions submitted to SSA
- F. a walkthrough of the EIEP's data center to observe and document physical security safeguards
- G. a demonstration of the EIEP's implementation of online exchange of data with SSA,

- H. a discussion with managers, supervisors, information security officers, system administrators, or other state stakeholders,
 - I. an examination of management control procedures and reports pertaining to anomaly detection and prevention reports,
 - J. a demonstration of technical tools pertaining to user access control and, if appropriate, browsing prevention,
 - K. a demonstration of how a permission module or similar design triggers requests for information from SSA, and
 - L. a demonstration of how a permission module prevents the EIEP's system from processing SSNs not present in the EIEP's system.
- 1) We can accomplish this by attempting to obtain information from SSA using at least one, randomly created, fictitious number not known to the EIEP's system.**

SSA may perform an onsite or remote review for reasons including, but not limited, to the following:

- a) the EIEP has experienced a security breach or incident involving SSA-provided information
- b) the EIEP has unresolved non-compliance issue(s)
- c) to review an offsite contractor's facility that processes SSA-provided information
- d) the EIEP is a legacy organization that has not yet been through SSA's security certification and compliance review programs
- e) the EIEP requested that SSA perform an IV & V (Independent Verification and Validation review)

During the compliance review, SSA, or a certifier acting on its behalf, may request a demonstration of the system's audit trail and retrieval capability. The certifier may request a demonstration of the system's capability for tracking the activity of employees who view SSA-provided information within the EIEP's system. The certifier may request EIEPs that have STCs that handle and audit transactions with SSA to demonstrate the process used to obtain audit information from the STC.

If an STC handles and audits the EIEP's transactions with SSA, we may require the EIEP to demonstrate both their in-house audit capabilities and the processes used to

obtain audit information from the STC regarding the EIEP's transactions with SSA.

If the EIEP employs a contractor who will process, handle, or transmit the EIEP's SSA-provided information offsite, SSA, at its discretion, may request to include in the onsite compliance review an onsite inspection of the contractor's facility. The inspection may occur with or without a representative of the EIEP. The format of the review in routine circumstances (e.g., the compliance review is not being conducted to address a special circumstance, such as a disclosure violation, etc.) will generally consist of reviewing and updating the EIEP's compliance with the systems security requirements described above in this document. At the conclusion of the review, SSA will issue a formal report to appropriate EIEP personnel. The Compliance Report will address findings and recommendations from SSA's compliance review, which includes a plan for monitoring each issue until closure.

NOTE: SSA will never request documentation for compliance reviews unless necessary to assess the EIEP's security posture. The information is only accessible to authorized individuals who have a need for the information as it relates to the EIEP's compliance with its electronic data exchange agreement with SSA and the associated system security requirements and procedures. SSA will not retain the EIEP's documentation any longer than required. SSA will delete, purge, or destroy the documentation when the retention requirement expires.

Compliance Reviews are either on-site or remote reviews. High-risk reviews must be onsite reviews, medium risk reviews are usually onsite, and low risk reviews may qualify for a remote review via telephone. The past performance of the entire state determines whether a review is onsite or remote **SSA determines a state's risk level based on the "high water mark principle."** If one agency is high risk, the entire state is high risk. The following is a high-level example of the analysis that aids SSA in making a preliminary determination as to which review format is appropriate. SSA may also use additional factors to determine whether SSA will perform an onsite or remote compliance review.

A. High/Medium Risk Criteria

- 1) undocumented closing of prior review finding(s),
- 2) implementation of management, operational or technical controls that affect security of SSA-provided information (e.g. implementation of new data access method), or
- 3) a reported PII breach within the state.

B. Low Risk Criteria

- 1) no prior review finding(s) or prior finding(s) documented as closed
- 2) no implementation of technical/operational controls that impact security of SSA provided
- 3) information (e.g. implementation of new data access method) no reported PII breach

6.5.1 EIEP Compliance Review Participation

SSA may request to meet with the following stakeholders during the compliance review:

- a) a sample of managers, supervisors, information security officers, system administrators, etc. responsible for enforcing and monitoring ongoing compliance to security requirements and procedures to assess their level of training to monitor their employee's use of SSA-provided information, and for reviewing reports and taking necessary action
- b) the individuals responsible for performing security awareness and employee sanction functions to learn how EIEPs fulfill this requirement
- c) a sample of the EIEP's employees to assess their level of training and understanding of the requirements and potential sanctions applicable to the use and misuse of SSA-provided information
- d) the individual(s) responsible for management oversight and quality assurance functions to confirm how the EIEP accomplishes this requirement
- e) any additional individuals as deemed appropriate by SSA (i.e. analysts, Project/Program Manager, claims reps, etc.)

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6.6 Scheduling the Onsite Review

SSA will not schedule the onsite review until SSA approves the EIEP's SDP or the EIEPs stakeholders participating in the compliance review have agreed upon a schedule. There is no prescribed period for arranging the subsequent onsite review (*certification review* for an EIEP requesting initial access to SSA-provided information for an initial agreement or *compliance review* for other EIEPs). Unless there are compelling circumstances precluding it; the onsite review will occur as soon as reasonably possible.

The scheduling of the onsite review may depend on additional factors including:

- a) the reason for submission of an SDP or CRQ,
- b) the severity of security issues, if any,
- c) circumstances of the previous review, if any, and
- d) SSA's workload and resource considerations.

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7. Additional Definitions

Back Button:

Refers to a button on a web browser's toolbar, the *backspace button* on a computer keyboard, a programmed keyboard button or mouse button, etc., that returns a user to a previously visited web page or application screen.

Breach:

Refers to actual loss, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where unauthorized persons have access or potential access to PII or Covered Information, whether physical, electronic, or in spoken word or recording

Browsing:

Requests for or queries of SSA-provided information for purposes not related to the performance of official job duties

Choke Point:

The firewall between a local network and the Internet is a choke point in network security, because any attacker would have to come through that channel, which is typically protected and monitored.

Cloud Computing:

The term refers to Internet-based computing derived from the cloud drawing representing the Internet in computer network diagrams. Cloud computing providers deliver on-line and on-demand Internet services. Cloud Services normally use a browser or Web Server to deliver and store information.

Cloud Computing (NIST SP 800-145 Excerpt):

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.

Essential Characteristics:

On-demand self-service - A consumer can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service provider.

Broad network access - Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, tablets, laptops, and workstations).

Resource pooling - The provider's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or datacenter). Examples of resources include storage, processing, memory, and network bandwidth.

Rapid elasticity - Capabilities can be elastically provisioned and released, in some cases automatically, to scale rapidly outward and inward commensurate with demand. To the consumer, the capabilities available for provisioning often appear to be unlimited and can be appropriated in any quantity at any time.

Measured service - Cloud systems automatically control and optimize resource use by leveraging a metering capability¹ at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the provider and consumer of the utilized service.

Service Models:

Software as a Service (SaaS) - The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure². The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Platform as a Service (PaaS) - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages, libraries, services, and tools supported by the provider.³ The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly configuration settings for the application-hosting environment.

Infrastructure as a Service (IaaS) - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

Deployment Models:

Private cloud - The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.

Community cloud - The cloud infrastructure is provisioned for exclusive use by a specific

community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.

Public cloud - The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.

Hybrid cloud - The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

1 Typically this is done on a pay-per-use or charge-per-use basis.

2 A cloud infrastructure is the collection of hardware and software that enables the five essential characteristics of cloud computing. The cloud infrastructure can be viewed as containing both a physical layer and an abstraction layer. The physical layer consists of the hardware resources that are necessary to support the cloud services being provided, and typically includes server, storage and network components. The abstraction layer consists of the software deployed across the physical layer, which manifests the essential cloud characteristics. Conceptually the abstraction layer sits above the physical layer.

3 This capability does not necessarily preclude the use of compatible programming languages, libraries, services, and tools from other sources.

Cloud Drive:

A cloud drive is a Web-based service that provides storage space on a remote server.

Cloud Audit:

Cloud Audit is a specification developed at Cisco Systems, Inc. that provides cloud computing service providers a standard way to present and share detailed, automated statistics about performance and security.

The Federal Risk and Authorization Program (FedRAMP):

FedRAMP is a risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

Commingling:

Commingling is the creation of a common database or repository that stores and maintains both SSA-provided information and preexisting EIEP PII.

Data Exchange:

Data Exchange is a logical transfer of information from one government entity's systems of records (SOR) to another agency's application or mainframe through a secure and exclusive connection.

Degaussing:

Degaussing is the method of using a "special device" (i.e., a device that generates a magnetic field) in order to disrupt magnetically recorded information. Degaussing can be effective for purging damaged media and media with exceptionally large storage capacities. Degaussing is not effective for purging non-magnetic media (e.g., optical discs).

Function:

One or more persons or organizational components assigned to serve a particular purpose, or perform a particular role. The purpose, activity, or role assigned to one or more persons or organizational components.

Hub:

As it relates to electronic data exchange with SSA, a hub is an organization, which serves as an electronic information conduit or distribution collection point. The term Hub is interchangeable with the terms "StateTransmission Component," "State Transfer Component," or "STC."

ICON:

Interstate Connection Network (various entities use 'Connectivity' rather than 'Connection')

IV & V:

Independent Verification and Validation

Legacy System:

A term usually referring to a corporate or organizational computer system or network that utilizes outmoded programming languages, software, and/or hardware that typically no longer receives support from the original vendors or developers.

Manual Transaction:

A user-initiated operation (also referred to as a "user-initiated transaction"). This is the opposite of a system-generated automated process.

Example: A user enters a client's information including the client's SSN and presses the "ENTER" key to acknowledge that input of data is complete. A new screen appears with multiple options, which include "VERIFY SSN" and "CONTINUE". The user has the option to verify the client's SSN or perform alternative actions.

Media Sanitization:

- f) Disposal: Refers to the discarding (e.g., recycling) media that contains no sensitive or confidential data.
- g) Overwriting/Clearing: This type of media sanitization is adequate for protecting information from a robust keyboard attack. Clearing must prevent retrieval of information by data, disk, or file recovery utilities. Clearing must be resistant to keystroke recovery attempts executed from standard input devices and from data scavenging tools. For example, overwriting is an acceptable method for clearing media. Deleting items, however, is not sufficient for clearing.

This process may include overwriting all addressable locations of the data, as well as its logical storage location (e.g., its file allocation table). The aim of the overwriting process is to replace or obfuscate existing information with random data. Most rewriteable media may be cleared by a single overwrite. This method of sanitization is not possible on unwriteable or damaged media.

- h) Purging: This type of media sanitization is a process that protects information from a laboratory attack. The terms *clearing* and *purging* are sometimes synonymous. However, for some media, clearing is not sufficient for purging (i.e., protecting data from a laboratory attack). Although most re-writeable media requires a single overwrite, purging may require multiple rewrites using different characters for each write cycle.

This is because a laboratory attack involves threats with the capability to employ non-standard assets (e.g., specialized hardware) to attempt data recovery on media outside of that media's normal operating environment.

- i) Degaussing is also an example of an acceptable method for purging magnetic media. The EIEP should destroy media if purging is not a viable method for sanitization.
- Destruction: Physical destruction of media is the most effective form of sanitization. Methods of destruction include burning, pulverizing, and shredding. Any residual medium should be able to withstand a laboratory attack.

Permission module:

A utility or subprogram within an application, which automatically enforces the relationship of a request for or query of SSA-provided information to an authorized process or transaction before initiating a transaction. The System will not allow a user to request information from SSA unless the EIEP's client system contains a record of the subject individual's SSN. A properly configured Permission Module also enforces referential integrity and prevents unauthorized random browsing of PII.

Screen Scraping:

Screen scraping is normally associated with the programmatic collection of visual data from a source. Originally, screen scraping referred to the practice of reading text data from a computer display terminal's screen. This involves reading the terminal's memory through its auxiliary port, or by connecting the terminal output port of one computer system to an input port on another. The term screen scraping is synonymous with the term bidirectional exchange of data.

A screen scraper might connect to a legacy system via Telnet, emulate the keystrokes needed to navigate the legacy user interface, process the resulting display output, extract the desired data, and pass it on to a modern system.

More modern screen scraping techniques include capturing the bitmap data from a screen and running it through an optical character reader engine, or in the case of graphical user interface applications, querying the graphical controls by programmatically obtaining references to their underlying programming objects.

Security Breach:

An act from outside an organization that bypasses or violates security policies, practices, or procedures.

Security Incident:

A security incident happens when a fact or event signifies the possibility that a breach of security may be taking place, or may have taken place. All threats are security incidents, but not all security incidents are threats.

Security Violation:

An act from within an organization that bypasses or disobeys security policies, practices, or procedures.

Sensitive data:

Sensitive data is a special category of personally identifiable information (PII) that has the potential to cause great harm to an individual, government agency, or program if abused, misused, or breached. It is sensitive information protected against unwarranted disclosure and carries specific criminal and civil penalties for an individual convicted of unauthorized access, disclosure, or misuse. Protection of sensitive information usually involves specific classification or legal precedents that provide special protection for legal and ethical reasons.

Security Information Management (SIM):

SIM is software that automates the collection of event log data from security devices such as firewalls, proxy servers, intrusion detection systems and anti-virus software. The SIM translates the data into correlated and simplified formats.

SMDS (Switched Multimegabit Data Service (SMDS):

SMDS is a telecommunications service that provides connectionless, high-performance, packet-switched data transport. Although not a protocol, it supports standard protocols and communications interfaces using current technology.

SSA-provided data/information:

Synonymous with “SSA-supplied data/information”, defines information under the control of SSA provided to an external entity under the terms of an information exchange agreement with SSA. The following are examples of SSA-provided data/information:

- SSA’s response to a request from an EIEP for information from SSA (e.g., date of death)
- SSA’s response to a query from an EIEP for verification of an SSN

SSA data/information:

This term, sometimes used interchangeably with “SSA-provided data/information,” denotes information under the control of SSA provided to an external entity under the terms of an information exchange agreement with SSA. However, “**SSA data/information**” also includes information provided to the EIEP by a source other than SSA, but which the EIEP attests to that SSA verified it, or the EIEP couples the information with data from SSA as to to certify the accuracy of the information. The following are examples of SSA information:

- SSA’s response to a request from an EIEP for information from SSA (e.g., date of death)
- SSA’s response to a query from an EIEP for verification of an SSN

- Display by the EIEP of SSA's response to a query for verification of an SSN **and** the associated SSN provided by SSA
- Display by the EIEP of SSA's response to a query for verification of an SSN **and** the associated SSN provided to the EIEP by a source other than SSA
- Electronic records that contain only SSA's response to a query for verification of an SSN **and** the associated SSN whether provided to the EIEP by SSA or a source other than SSA

SSN:

Social Security Number

STC:

A State Transmission/Transfer Component is an organization, which performs as an electronic information conduit or collection point for one or more other entities (also referred to as a hub).

System-generated transaction:

A transaction automatically triggered by an automated system process.

Example: A user enters a client's information including the client's SSN on an input screen and presses the "ENTER" key to acknowledge that input of data is complete. An automated process then matches the SSN against the organization's database and when the systems finds no match, automatically sends an electronic request for verification of the SSN to SSA.

Systems process:

Systems Process refers to a software program module that runs in the background within an automated batch, online, or other process.

Third Party:

Third Party pertains to an entity (person or organization) provided access to SSA-provided information by an EIEP or other SSA business partner for which one or more of the following apply:

- is not stipulated access to SSA-provided information by an information-sharing agreement between an EIEP and SSA
- has no data exchange agreement with SSA
- SSA does not directly authorize access to SSA-provided information

Transaction-driven:

This term pertains to an automatically initiated online query of or request for SSA information by an automated transaction process (e.g., driver license issuance, etc.). The query or request will only occur the automated process meets prescribed conditions.

Uncontrolled transaction:

This term pertains to a transaction that falls outside a permission module. An uncontrolled transaction is not subject to a systematically enforced relationship between an authorized process or application and an existing client record.

8. Regulatory References

- Federal Information Processing Standards (FIPS) Publications
- Federal Information Security Management Act of 2002 (FISMA)
- Homeland Security Presidential Directive (HSPD-12)
- National Institute of Standards and Technology (NIST) Special Publications
- Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Control*
- Office of Management and Budget (OMB) Circular A-130, Appendix III, *Management of Federal Information Resources*
- Office of Management and Budget (OMB) Memo M-06-16, *Protection of Sensitive Agency Information, June 23, 2006*
- Office of Management and Budget (OMB) Memo M-07-16, *Memorandum for the Heads of Executive Departments and Agencies May 22, 2007*
- Office of Management and Budget (OMB) Memo M-07-17, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007*
- Privacy Act of 1974, as amended

9. Frequently Asked Questions (Click links for answers or additional information)

1. Q: What is a [breach](#) of data?
A: Refer to [Security Breach](#), [Security Incident](#), and [Security Violation](#).
2. Q: What is employee [browsing](#)?
A: Requests for or queries of SSA-provided information for purposes not related to the performance of official job duties
3. Q: Okay, so the EIEP submitted the SDP. Can SSA schedule the Onsite

Review?

A: Refer to [Scheduling the Onsite Review](#).

4. Q: What is a “**Permission Module**?”

A: A utility or subprogram within an application, which automatically enforces the relationship of a request for or query of SSA-provided information to an authorized process or transaction before initiating a transaction. For example, if requests for verification of an SSN for issuance of a driver’s license happens automatically from within a state driver’s license application. The System will not allow a user to request information from SSA unless the EIEP’s client system contains a record of the subject individual’s SSN.

5. Q: What “**Screen Scraping**?”

A: Screen scraping is normally associated with the programmatic collection of visual data from a source. Originally, screen scraping referred to the practice of reading text data from a computer display terminal’s screen. This involves reading the terminal’s memory through its auxiliary port, or by connecting the terminal output port of one computer system to an input port on another. The term screen scraping is synonymous with the term bidirectional exchange of data.

A screen scraper might connect to a legacy system via Telnet, emulate the keystrokes needed to navigate the legacy user interface, process the resulting display output, extract the desired data, and pass it on to a modern system.

More modern screen scraping techniques include capturing the bitmap data from a screen and running it through an optical character reader engine, or in the case of graphical user interface applications, querying the graphical controls by programmatically obtaining references to their underlying programming objects.

6. Q: When does an EIEP have to submit an SDP?

A: Refer to [When the SDP is Required](#).

7. Q: Does an EIEP have to submit an SDP when the agreement is renewed?

A: The EIEP does not have to submit an SDP *because* the agreement between the EIEP and SSA was renewed. There are, however, circumstances that require an EIEP to submit an SDP.

Refer to [When the SDP is Required](#).

8. Q: Is it acceptable to save SSA-provided information with a verified indicator on a (EIEP) workstation if the EIEP uses an encrypted hard drive? If not, what options does the agency have?

A: There is no problem with an EIEP saving SSA-provided information on the encrypted hard drives of computers used to process SSA-provided information if the EIEP retains the information only as provided for in

the EIEP's data-sharing agreement with SSA.
Refer to [Data and Communications Security](#).

9. Q: Does SSA allow EIEPs to use caching of SSA-provided information on the EIEP's workstations?
A: Caching during processing is not a problem. However, SSA-provided information must clear from the cache when the user exits the application. Refer to [Data and Communications Security](#).
10. Q: What does the term "interconnections to other systems" mean?
A: As used in SSA's system security requirements document, the term "interconnections" is the same as the term "connections."
11. Q: Is it acceptable to submit the SDP as a .PDF file?
A: No, it is not. The document must remain editable.
12. Q: Should the EIEP write the SDP from the standpoint of the EIEP SVES (or applicable data element) access itself, or from the standpoint of access to all data provided to the EIEP by SSA?
A: The SDP is to encompass the EIEP's entire electronic access to SSA-provided information as per the electronic data exchange agreement between the EIEP and SSA.
Refer to [Developing the SDP](#).
13. Q: If the EIEP has a "transaction-driven" system, does the EIEP still need a permission module? If employees cannot initiate a query to SSA, why would the EIEP need the permission module?
A: "Transaction driven" means that queries submit requests automatically (and it might depend on the transaction). Depending on the system's design, queries might not be automatic or it may still permit manual transactions. A system may require manual transactions to correct an error. SSA does not prohibit manual transactions if an ATS properly tracks such transactions. If a "transaction-driven" system permits any type of alternate access, it still requires a permission module, even if it restricts users from performing manual transactions. If the system does **not** require the user to be in a particular application and/or the query to be for an existing record in the EIEP's system **before** the system will allow a query to go through to SSA, it would still need a permission module.
14. Q: What is an Onsite Compliance Review?
A: The Onsite Compliance Review is SSA's periodic site visits to its Electronic Information Exchange Partners (EIEP) to certify whether the EIEP's management, operational, and technical security measures for protecting data obtained electronically from SSA continue to conform to the terms of the EIEP's data sharing agreements with SSA and SSA's associated system security requirements and procedures.
Refer to the [Compliance Review Program and Process](#).

15. Q: What are the criteria for performing an Onsite Compliance Review?
A: The following are criteria for performing the Onsite Compliance Review:
- EIEP initiating new access or new access method for obtaining information from SSA
 - EIEP's cyclical review (previous review was performed remotely)
 - EIEP has made significant change(s) in its operating or security platform involving SSA-provided information
 - EIEP experienced a breach of SSA-provided personally identifying information (PII)
 - EIEP has been determined to be high-risk
16. Q: What is a Remote Compliance Review?
A: The Remote Compliance Review is when SSA conducts the meetings remotely (e.g., via conference calls). SSA schedules conference calls with its EIEPs to determine whether the EIEPs technical, managerial, and operational security measures for protecting data obtained electronically from SSA continue to conform to the terms of the EIEP's data sharing agreements with SSA and SSA's associated system security requirements and procedures. Refer to the [Compliance Review Program and Process](#).
17. Q: What are the criteria for performing a Remote Compliance Review?
A: The EIEP must satisfy the following criteria to qualify for a Remote Compliance Review:
- EIEP's cyclical review (SSA's previous review yielded no findings or the EIEP satisfactorily resolved cited findings)
 - EIEP has made no significant change(s) in its operating or security platform involving SSA-provided information
 - EIEP has not experienced a breach of SSA-provided personally identifying information (PII) since its previous compliance review.
 - SSA rates the EIEP as a low-risk agency or state

ATTACHMENT 5

SYSTEM CERTIFICATION REQUIREMENTS FOR THE CMS HUB

Not Applicable

Security Certification Requirements for use of the *SSA Data Set* via the Centers for Medicare & Medicaid Services' (CMS) Hub

The Social Security Administration (SSA) does not allow new data exchange partners to begin receiving data electronically until the Authorized State Agency submits an approved Security Design Plan (SDP). SSA's Office of Information Security (OIS) usually performs an onsite security review to verify and validate that the management, operational, and technical controls conform to the requirements of the signed agreements between SSA and the Authorized State Agency, as well as applicable Federal law and SSA's technical systems security requirements (Attachment 4 to the Information Exchange Agreement (IEA)). As it concerns the use of the *SSA Data Set* via the Hub, OIS will waive the initial SDP/Certification for an existing Authorized State Agency if it meets all the following criteria:

1. The Authorized State Agency already has a functioning CMS-approved Integrated Eligibility Verification System (IEVS).
2. The Authorized State Agency is already receiving data from the Hub to support the Medicaid program and/or the Children's Health Insurance Program (CHIP).
3. The Authorized State Agency will only process requests for the *SSA Data Set* for administration of health or income maintenance programs approved by SSA through the Hub in conjunction with Insurance Affordability Programs eligibility determinations.
4. The Authorized State Agency agrees that the SSA security controls identified in the IEA and Attachment 4 to the IEA will prevail for all SSA data received by the State Agency, including the *SSA Data Set*.
5. The Authorized State Agency agrees that a significant vulnerability or risk in a security control, a data loss, or a security breach may result in a suspension or termination of the *SSA Data Set* through the Hub. In this case, at SSA's request, the Authorized State Agency agrees to immediately cease using the *SSA Data Set* for all SSA authorized health or income maintenance programs until the State Agency sufficiently mitigates or eliminates such risk(s) and/or vulnerabilities to SSA's data.
6. The Authorized State Agency agrees not to process verification requests through the Hub from a standalone application for health or income maintenance program requests that have no connection to Insurance Affordability Programs eligibility determinations.

In the event that an Authorized State Agency decides to implement a new integrated eligibility system or use a different Authorized State Agency to implement the health or income maintenance data exchange process through the Hub, the Authorized State Agency will submit to SSA's OIS an SDP and be approved/certified prior to receipt of the *SSA Data Set* through the Hub. The Authorized State Agency will adhere to the following criteria, in addition to those stated in the IEA, section C, Program Questionnaire:

1. The Authorized State Agency agrees to provide an attestation to SSA that it has received certification through the CMS Hub approval MARS-E process.
2. The Authorized State Agency attests that it operates and has a CMS-approved IEVS and the IEVS initiates the request for the *SSA Data Set* for the State Agency's administration of health or income maintenance programs approved by SSA through the Hub in conjunction with Insurance Affordability Programs eligibility determinations.



3. The Authorized State Agency uses a streamlined multi-benefit application. The Authorized State Agency agrees not to process verification requests through the Hub from a standalone application for health or income maintenance program requests that have no connection to Insurance Affordability Programs eligibility determinations.
4. The Authorized State Agency will not request the *SSA Data Set* through the Hub until it has successfully begun using the Hub for administration of Insurance Affordability Programs eligibility determinations. SSA will begin sending the *SSA Data Set* to the Authorized State Agency after the State Agency verifies that the Hub process works, as required by the CMS Hub approval MARS-E process.
5. The Authorized State Agency agrees to participate in SSA's SDP/Certification process prior to transmitting requests for the *SSA Data Set* through the Hub and to participate in SSA's triennial security compliance reviews on an ongoing basis.
6. The Authorized State Agency agrees that a significant vulnerability or risk in a security control, a data loss, or a security breach may result in a suspension or termination of the *SSA Data Set* through Hub. In this case, at SSA's request, the Authorized State Agency agrees to immediately cease using the *SSA Data Set* for all SSA authorized health or income maintenance programs until the State Agency sufficiently mitigates or eliminates such risk(s) and/or vulnerabilities to SSA's data.



ATTACHMENT 6

**WORKSHEET FOR REPORTING LOSS OR PORTENTIAL LOSS
OF PERSONALLY INDETIFIABLE INFORMATION**

09/27/06

Worksheet for Reporting Loss or Potential Loss of Personally Identifiable Information

1. Information about the individual making the report to the NCSC:

Name:					
Position:					
Deputy Commissioner Level Organization:					
Phone Numbers:					
Work:		Cell:		Home/Other:	
E-mail Address:					
Check one of the following:					
Management Official		Security Officer		Non-Management	

2. Information about the data that was lost/stolen:

Describe what was lost or stolen (e.g., case file, MBR data):

Which element(s) of PII did the data contain?

Name		Bank Account Info	
SSN		Medical/Health Information	
Date of Birth		Benefit Payment Info	
Place of Birth		Mother's Maiden Name	
Address		Other (describe):	

Estimated volume of records involved:

3. How was the data physically stored, packaged and/or contained?

Paper or Electronic? (circle one):

If Electronic, what type of device?

Laptop		Tablet		Backup Tape		Blackberry	
Workstation		Server		CD/DVD		Blackberry Phone #	
Hard Drive		Floppy Disk		USB Drive			
Other (describe):							

09/27/06

Additional Questions if Electronic:

	<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
a. Was the device encrypted?			
b. Was the device password protected?			
c. If a laptop or tablet, was a VPN SmartCard lost?			
Cardholder's Name:			
Cardholder's SSA logon PIN:			
Hardware Make/Model:			
Hardware Serial Number:			

Additional Questions if Paper:

	<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
a. Was the information in a locked briefcase?			
b. Was the information in a locked cabinet or drawer?			
c. Was the information in a locked vehicle trunk?			
d. Was the information redacted?			
e. Other circumstances:			

4. **If the employee/contractor who was in possession of the data or to whom the data was assigned is not the person making the report to the NCSC (as listed in #1), information about this employee/contractor:**

Name:			
Position:			
Deputy Commissioner Level Organization:			
Phone Numbers:			
Work:		Cell:	Home/Other:
E-mail Address:			

5. **Circumstances of the loss:**
- a. When was it lost/stolen?
 - b. Brief description of how the loss/theft occurred:
 - c. When was it reported to SSA management official (date and time)?
6. **Have any other SSA components been contacted? If so, who? (Include deputy commissioner level, agency level, regional/associate level component names)**

09/27/06

7. Which reports have been filed? (include FPS, local police, and SSA reports)

Report Filed	<u>Yes</u>	<u>No</u>	<u>Report Number</u>
Federal Protective Service			
Local Police			
	Yes	No	
SSA-3114 (Incident Alert)			
SSA-342 (Report of Survey)			
Other (describe)			

8. Other pertinent information (include actions under way, as well as any contacts with other agencies, law enforcement or the press):

CCC 04/2017

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> Mono County Behavioral Health		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Community Development

TIME REQUIRED

SUBJECT Contract with Panorama
Environmental, Inc. for Environmental
Analysis of Water Leases/Transfers
in Walker River Basin

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Proposed contract with Panorama Environmental Inc. for an amount not to exceed \$365,961, for California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin, Mono County.

RECOMMENDED ACTION:

Approve County entry into proposed contract and authorize CAO Leslie Chapman to execute said contract on behalf of the County. Provide any desired direction to staff.

FISCAL IMPACT:

No impact to the General Fund; Staff and Consultant costs are funded by the National Fish and Wildlife Foundation (NFWF) via a grant from the U.S. Bureau of Reclamation's Desert Terminal Lakes Program. The contract amount of \$365,961 was included in the General Fund's budget.

CONTACT NAME: Michael Draper

PHONE/EMAIL: 760-924-1805 / mdraper@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
<input type="checkbox"/> Staff Report
<input type="checkbox"/> RFP
<input type="checkbox"/> Contract (rev'd ss)

History

Time	Who	Approval
11/16/2017 5:13 AM	County Administrative Office	Yes
11/13/2017 4:14 PM	County Counsel	Yes
11/9/2017 1:31 PM	Finance	Yes

Mono County Community Development Department

PO Box 347
Mammoth Lakes, CA 93546
760.924.1800, fax 924.1801
commdev@mono.ca.gov

PO Box 8
Bridgeport, CA 93517
760.932.5420, fax 932.5431
www.monocounty.ca.gov

November 21, 2017

To: Mono County Board of Supervisors

From: Michael Draper, Planning Analyst
Wendy Sugimura, Senior Analyst

Re: Contract with Panorama Environmental, Inc. for the California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin, Mono County.

RECOMMENDED ACTION

Approve County entry into proposed contract and authorize CAO Leslie Chapman to execute said contract on behalf of the County. Provide any desired direction to staff.

FISCAL IMPACT

No impact to the General Fund; staff and consultant costs are funded by the National Fish and Wildlife Foundation (NFWF) via a grant from the U.S. Bureau of Reclamation's Desert Terminal Lakes Program.

DISCUSSION

The Community Development Department distributed a Request for Proposals (RFP) for the subject project on August 11, 2017, please see Attachment 1 for the Project Description. Three proposals were received and evaluated by Community Development and County Counsel staff. Following an interview, the staff panel unanimously recommended the selection of Panorama Environmental Inc. The proposed contract and Panorama's approach to the project, scope of work, and budget are included in Attachment 2.

ATTACHMENTS:

1. RFP
2. Contract

Mono County Community Development Department

P.O. Box 347
Mammoth Lakes, CA 93546
(760) 924-1800, fax 924-1801
commdev@mono.ca.gov

Planning Division

P.O. Box 8
Bridgeport, CA 93517
(760) 932-5420, fax 932-5431
www.monocounty.ca.gov

REQUEST FOR PROPOSALS

California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin

August 11, 2017

SUMMARY

The County of Mono, California, is seeking a multi-disciplinary environmental planning and policy firm for the preparation of General Plan policies, and an accompanying California Environmental Quality Act (CEQA) analysis, for the potential participation of Mono County water rights holders in a water transaction program related to the restoration of Walker Lake in Nevada. The General Plan policies and Environmental Impact Report (EIR) would establish the governing framework for, and evaluate the environmental impacts of, Mono County water rights holders' participation in the Walker Basin Restoration Program's (Program) water transactions, which supports the voluntary sale and lease of water and related interests from willing sellers. This Program has been active in the Nevada portion of the Walker Basin, and Mono County is now considering adopting a policy into the general plan that will guide its water rights holders' participation so as to maximize benefits within the County and Walker Lake and minimize harmful impacts.

BACKGROUND¹

Since the late 19th century, natural flows from the Walker River, which runs through Mono County in eastern California and terminates at Walker Lake in Nevada, were diverted to support hay, pasture, and other irrigated crops, including the construction of three dams. These diversions and developments have sustained a strong agricultural economy, vibrant natural landscapes and habitat and a rural way of life in Mono County. However, they have also reduced freshwater inflows to Walker Lake, a natural desert lake in Mineral County, Nevada. As a result, Total Dissolved Solids (TDS) in Walker Lake have increased to the point that the lake can no longer support its native fish and wildlife populations.

The Walker Basin Restoration Program (Program) was established by Public Law 11-85 (2009) for the primary purpose of restoring and maintaining Walker Lake and protecting agricultural, environmental, and habitat interests in the Walker Basin consistent with that primary purpose. The National Fish and Wildlife Foundation (NFWF) administers the Program via grant funds from the U.S. Bureau of Reclamation's Desert Terminal Lakes Program.

The Program works in partnership with local communities, private landowners, water managers, tribes, and a variety of public agencies. It supports voluntary sale and lease of water and related interests from willing sellers, as well as associated conservation, stewardship, and research activities. The Program has been active in Nevada, spending about \$75 million on water and related assets to acquire about 40% of the water needed to restore and maintain Walker Lake as of 2016. More information on the Program is available at www.walkerbasin.org.

The Program potentially allows for the purchase and/or lease water from willing sellers in the California portions of the Walker River Basin, which is located within Mono County. The Program seeks local input into the development of the California Programs, including review and approval by a locally-elected decision making body, such as the Mono County Board of Supervisors, prior to implementation. This local guidance and input will increase the likelihood that the California Programs are appropriately and beneficially carried out.

¹ Documents consulted and utilized for this section include: Walker Basin Restoration Program, 2010-2015 Program Report (NFWF, 2016); and Memorandum of Understanding with National Fish and Wildlife Foundation (Mono County Board of Supervisors Minute Order M12-59, March 13, 2012, Agenda Item 12a).

Similarly, the Mono County Board of Supervisors desires and is willing to review (including environmental review as required by CEQA), comment upon, and consider for approval, policies and/or proposals for implementation of the California Programs.

Therefore, NFWF and Mono County entered into a Memorandum of Understanding in 2012 subject to the following terms and conditions:

1. NFWF will work with the Resource Conservation District (RCD) or other parties to develop one or more grant agreements to support development of the California Programs and will not expend, nor authorize the expenditure of, funds appropriated to the Desert Terminal Lakes Fund for the lease or purchase of land, water appurtenant to the land, or related interests within Mono County unless and until the Mono County Board of Supervisors has reviewed, commented upon, and concurred with the scope and nature of the California Programs and complied with its obligations under CEQA.
2. The Mono County Board of Supervisors will review, comment upon, and consider approving a proposal presented to it by the RCD (or other parties working in conjunction with the Program) for implementation of a short-term Water Leasing Demonstration Program within Mono County, as well as such other proposal(s) for implementation of the California Programs which may be presented to it, subject to the conditions stated in paragraphs 3 and 4 below, and will work in good faith to support their timely consideration. The Board's approval shall not be unreasonably withheld.
3. The costs of processing, environmental review, and related expenses associated with consideration of the proposal(s) by the Board of Supervisors shall be paid by the applicant/proponent in accordance with the County's standard environmental processing procedures, unless otherwise agreed to in writing by the County.
4. As required by CEQA, the Board of Supervisors shall retain discretion to conditionally approve, approve, disapprove, or modify any proposal presented to it pursuant to this agreement for implementation of the California Programs.
5. This MOU shall remain in effect for the duration of the Program grant agreement with the Bureau of Reclamation, including any renewal thereof or subsequent grant agreement involving substantially the same programs or activities, unless it is terminated sooner by the mutual written consent of the parties; may be amended from time to time by the mutual written consent of the parties; and shall be enforced only by action seeking specific performance and/or injunctive relief.

In early 2016, NFWF awarded a grant to Mono County to prepare a CEQA analysis of Mono County General Plan policies to address Walker Basin Restoration Program water transactions.

GENERAL APPROACH

The County of Mono, California, is seeking a multi-disciplinary environmental planning and policy firm for the preparation of policy alternatives, and an accompanying CEQA analysis (e.g., EIR), related to the County's consideration of local participation in the Walker Basin Restoration Program. The Program provides for the voluntary sale and lease of water and related interests from willing sellers in the Walker Basin in order to restore Walker Lake in Nevada. The Program has been active in the Nevada portion of the Walker Basin, and Mono County is now considering adopting policies into the general plan to guide implementation of the Program in the County.

If needed and desired, regional specialists / consultants may be sought to work with the multi-disciplinary firm or may be included in the firm's team, as appropriate, to build upon recent or ongoing research within the watershed. Such specialists that have been involved in past research and work may include the US Geological Survey, University of Nevada-Reno, Desert Research Institute, and local botanists or biologists.

County staff will play a large role in the project, including oversight of the consulting firm and significant outreach to communities and stakeholders. Existing forums such as the Mono County Planning Commission, Collaborative Planning Team (CPT), and Antelope Valley and Bridgeport Valley Regional Planning Advisory Committees (RPACs) would be used, in addition to targeted consultation with area ranchers, agricultural interests, and other interested stakeholders. Local water purveyors such as the Bridgeport Public Utility Water District and Antelope Valley Water Company would be specifically invited to participate in policy discussions. State and regional agencies would be contacted early and often, including the Lahontan Regional Water Quality Control Board (LRWQCB), Great Basin Unified Air Pollution Control District (GBUAPCD), Mono County Resource Conservation District (RCD), and California Department of Fish and Wildlife (CDFW). Ongoing Mono County collaborations with federal agencies such as the Bureau of Land Management (BLM), US Forest Service (USFS), Natural Resources Conservation Service (NRCS), and US Fish and Wildlife (USFWS) will be brought in to address applicable issues, such as potential impacts to Bi-State sage-grouse.

PROJECT DESCRIPTION

The project is to prepare General Plan policy alternatives and an accompanying CEQA analysis (e.g., EIR) for the County's potential participation in the Walker Basin Restoration Program. The goals of the project are to 1) develop General Plan policy alternatives to govern the participation in the program by water rights holders within the County, 2) prepare an Environmental Impact Report (EIR) assessing the effects of the General Plan policy alternatives on various resources within Mono County; and 3) if feasible, identify a preferred policy alternative and assist with the amendment of Mono County General Plan policies to accommodate participation in the program consistent with EIR mitigation strategies, with an emphasis on adaptive management/permitting based upon comprehensive monitoring.

The geographic scale is the entire Walker Lake watershed within Mono County, although the primary focus will be on irrigated ground and along the stream corridors in the East and West Walker River systems. The scope is limited to surface water transactions only, including short-term and permanent leasing, and sales of storage and decree direct diversion rights. Groundwater leasing and sales will not be considered.

No specific water transactions are known or proposed at this time. A future water transaction proposal by a specific applicant would be subject to a site-specific CEQA analysis.

This project will build upon the *Feasibility Assessment of a Water Transactions Program in the Walker Basin, California* (2014) commissioned by the Mono County Resource Conservation District. The assessment provided a significant amount of general information, and also identified information gaps and outstanding questions necessary to fully understand potential impacts of the program. The assessment may serve as the initial study portion of a CEQA analysis, allowing the County to proceed directly to an EIR, and is posted online as a supporting document for this RFP at <http://bids.monocounty.ca.gov/>.

If determined necessary, the requirements under the National Environmental Policy Act (NEPA) will also be addressed concurrently with the EIR.

The current Mono County General Plan contains a number of applicable policies, including policies specific to communities within the Walker River watershed (Antelope Valley and Bridgeport), agricultural preservation, biological resource protection (including Bi-State sage grouse populations and habitat), and water policy. (See the Land Use and Conservation/Open Space elements of the Mono County General Plan posted online at <http://monocounty.ca.gov/planning/page/general-plan.>)

The timeframe for completion is Sept. 30, 2018, which is the grant expiration date.

SCOPE OF WORK SUMMARY

Under the direction of Community Development Department staff, the major tasks to be performed by the consultant(s) are summarized below:

- Develop General Plan policy alternatives and an EIR according to an agreed-upon approach, including the determination of where existing information is sufficient, where additional research is needed, incorporation of existing information and research, and initiation/performance of field studies and new research. Specific studies may include:
 - Rare Plant Survey, with emphasis on fringe areas of valleys/meadows and riparian corridors, including seasonal canals/ditches. This will supplement the recent work conducted for the County General Plan Update EIR (available online at <http://www.monocounty.ca.gov/planning/page/general-plan>), with a focus on areas potentially impacted by water transactions.
 - Wildlife Assessment, with specific attention to sage grouse habitat (wet meadows, leks and brood-rearing areas). Past wildlife assessments will be reviewed and updated, as needed, and resources will focus on filling information gaps. This effort will be coordinated with concurrent efforts of Mono County as it continues to participate in Local Area Working Group efforts to implement and monitor the Bi-State Action Plan.
 - Visual Analysis, including simulations of visual appearance of altered landscapes/valleys.
 - Hydrology, to the extent information is available and/or information or data can be acquired within the project budget, and including potential impacts to wetlands, riparian corridors, and water quality.
 - Land Use Analysis, addressing potential agricultural conversion, community land use effects, and recreational impacts and mitigations.
 - Greenhouse gas emissions, including compliance with or impacts to the baseline and targets established by the County's Resource Efficiency Plan and included in the 2015 General Plan EIR.
- Assess the current status of County policy related to water transactions (e.g., how a water transaction would be handled under current policy) to determine potential issues, opportunities, and constraints, and areas for amendment.
- Consolidate all information, and identify issue areas to be addressed in revisions to the general plan. Develop suggested alternatives for revisions to the County General Plan, and ensure compatibility/consistency with the 2015 General Plan EIR, including alternatives and mitigation strategies, and local CEQA policies & practices.
- Conduct community outreach through existing forums such as the Mono County Planning Commission, Collaborative Planning Team, Antelope Valley and Bridgeport Regional Planning Advisory Committees, Bridgeport Public Utility District and Antelope Valley Mutual Water Company, in addition to targeted consultation with area ranchers and other stakeholders. This outreach will serve to both educate the public on the potential participation by water rights holders within Mono County in Water Transactions, as well as inform the County on potential interests or points of concern from water users and the general public.
- Review, integrate, and collaborate on ongoing complementary efforts, if applicable and available, including groundwater modeling, vegetation research, wetland delineation, and sage grouse habitat use identification, as may be deemed appropriate.
- Based on identified alternatives, draft and conduct extensive public and agency outreach on proposed General Plan policy adjustment. Refine and prepare preferred alternative General Plan Amendment. Finalize the Administrative Draft EIR.
- Present proposed General Plan revisions and EIR to the Planning Commission for recommendation and to the Board of Supervisors for EIR certification and consideration of General Plan Amendment.

The tentative not-to-exceed budget available through the grant is \$366,000 for an environmental planning firm to develop General Plan policies and an EIR compliant with CEQA requirements, including costs that may be necessary for potential special study(ies).

RFP REQUIREMENTS

To be considered, a consultant responding to this RFP must provide the following items and/or information in its submittal:

- A cover letter which shall provide the following: name, title, address and telephone number of individuals with the authority to negotiate and contractually bind the company.
- Discussion of proposed approach to the above listed project scope, including any assumptions, methodologies, special resources, etc., and a timeline for the completion of the project. If relevant, include any recommendations for additional items which should be added to the project scope to help assure success.
- A statement of the consultant's qualifications, including brief biographical profiles of the company and key personnel who will be assigned to work on the project. Any relevant certifications or education should be identified.
- A brief list of projects performed by the consultant on relevant projects with dates of work and references with contact information for each. Web links for relevant or similar work products may be included.
- A brief statement of qualifications and project summaries for sub consultants expected to be used on projects, such as those for specific studies.
- A not-to-exceed budget and schedule of fees presenting consultant's hourly rates and indirect charges proposed for the project(s).
- A disclosure of any financial, business or other relationship that the prospective consultant has with the County or any County employee that may have an impact upon the outcome of the selection process of this project. Alternatively, the consultant shall provide a signed statement that no disclosure is being made because no such relationship exists.
- A general statement on the ability to meet the following minimum insurance requirements which must be issued by an insurer with at least a "Best's" policyholder's rating of "A" or "A+":
 - ✓ *General Liability*: \$2 million combined single limit per occurrence. An additional insured endorsement applying to the County of Mono will be required upon contract award.
 - ✓ *Automobile Insurance*: \$300,000 per claim or occurrence applicable to all vehicles.
 - ✓ *Professional Errors and Omissions Liability Insurance*: \$1 million each occurrence/\$1 million policy aggregate.
 - ✓ *Workers Compensation*: in the legally required amount for employees engaged in the work.
- Any additional information demonstrating the consultant's capabilities as related to the selection criteria listed below.

SELECTION CRITERIA & PROCESS

All RFP materials, any amendments, and questions/answers will be posted online at <http://bids.monocounty.ca.gov/>. Questions about this RFQ are due by 5 pm on Sept. 4, 2017, and may be sent to wsugimura@mono.ca.gov or asked online. Responses will be posted online only by 5 pm on Sept. 5, 2017.

The deadline to respond to the RFP is September 15, 2017, at 5 pm. Please see "Submittal Instructions" below.

Each RFP will be reviewed to determine if it meets the requirements stated above. Mono County Code §3.04.040.D, Local Preference (http://library.municode.com/HTML/16496/level2/TIT3REFI_CH3.04PU.html#TIT3REFI_CH3.04PU_3.04.040PUPRQUSU) shall be applied by deducting 5% from the fee schedules of responsible local vendors, as defined by the code section, prior to evaluation.

A committee will then evaluate all qualifying proposals based on the following criteria and values:

<i>Item</i>	<i>Selection Criteria</i>	<i>Value</i>
1	Qualifications and experience conducting technical and environmental research and analyses for water lease/transfer projects, and/or water management projects in general	25 pts
2	Qualifications and experience synthesizing and integrating multiple data sources, technical issues, community and stakeholder input, and political concerns to develop General Plan policies and other outcomes in support of the project goals	25 pts
3	Key personnel's knowledge of local environmental characteristics, familiarity with Mono County, and knowledge of Mono County's General Plan & EIR, and applicable related studies	20 pts
4	Demonstrated capability to meet schedules and complete projects without major cost escalations or overruns	10 pts
5	Cost proposal and time line	10 pts
6	Ability to effectively communicate and work with staff as a team	10 pts

The evaluation committee may select firm(s) based on the above criteria, and/or may conduct oral interviews of the top-ranking firms. In the event oral interviews are conducted, the final selection shall be based on the outcome of such interviews.

The intention is to evaluate submittals, select consultants for interviews when deemed necessary, and notify those consultants within two weeks. Any interviews will be scheduled for the week of Sept. 25, 2017, and a consultant could be notified of selection for contract award within one week of the interview date.

The firm(s) selected to provide services to the County will be expected to enter into an agreement with the County to govern the provision of those services.

SUBMITTAL INSTRUCTIONS

- **Deadline:** To be considered, three hard copies (one unbound) and one digital copy of the consultant's RFP must be submitted by 5:00 pm on Sept. 15, 2017. Consultants are advised that, due to its remote location, overnight delivery to Mammoth Lakes by USPS, UPS, FedEx, and other carriers should be scheduled as a two-day delivery.
- **Send to:**
Mono County Community Development Department
c/o Wendy Sugimura
P.O. Box 347
437 Old Mammoth Road, STE P
Mammoth Lakes, CA 93546
- **Modification or Withdrawal of Submittals:** Any RFP received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the consultant prior to the submittal deadline.
- **Property Rights:** RFPs received become the property of the County and all rights to the contents therein become those of the County.

- **Confidentiality:** Before award of the contract, all submittals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all submittals), all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the submittals confidential will be regarded as non-effective and will be disregarded.
- **Amendments to Request for Qualifications:** The County reserves the right to amend this RFQ by addendum before the final submittal date. Any amendments will be posted online at <http://bids.monocounty.ca.gov/>.

Please contact Wendy Sugimura, Associate Analyst, at (760) 924-1814 or by email at wsugimura@mono.ca.gov should you have any questions or comments regarding this request.

**AGREEMENT BETWEEN COUNTY OF MONO
AND PANORAMA ENVIRONMENTAL, INC.
FOR THE DEVELOPMENT OF GENERAL PLAN POLICIES AND CALIFORNIA
ENVIRONMENTAL QUALITY ACT ANALYSIS RELATED TO
WATER LEASES/TRANSFERS IN THE WALKER RIVER BASIN, MONO COUNTY,**

INTRODUCTION

WHEREAS, the County of Mono (hereinafter referred to as "County") may have the need for the policy development and California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin, Mono County, California services of Panorama Environmental, Inc., of San Francisco, California (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by the Director of the Community Development Department, or an authorized representative thereof. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. By this Agreement the County incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if the County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those that are referred to in this Agreement.

This Agreement is subject to the following Exhibits (as noted) which are attached hereto, following all referenced Attachments, and incorporated by this reference. In the event of a conflict between

- the terms of an
- attached Exhibit and this Agreement, the terms of the Exhibit shall govern:
- Exhibit 1:** General Conditions (Construction)
- Exhibit 2:** Prevailing Wages
- Exhibit 3:** Bond Requirements
- Exhibit 4:** Invoicing, Payment, and Retention
- Exhibit 5:** Trenching Requirements
- Exhibit 6:** FHWA Requirements
- Exhibit 7:** CDBG Requirements
- Exhibit 8:** HIPAA Business Associate Agreement
- Exhibit 9:** Other

2. TERM

The term of this Agreement shall be from November 14, 2017, to December 31, 2019, unless sooner terminated as provided below.

3. CONSIDERATION

A. Compensation. County shall pay Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A that are performed by Contractor at County's request.

B. Travel and Per Diem. Contractor will not be paid or reimbursed for travel expenses or per diem that Contractor incurs in providing services and work requested by the County under this Agreement, unless otherwise provided for in Attachment B.

C. No Additional Consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed \$365,991.00 (hereinafter referred to as "Contract Limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed that is in excess of the Contract Limit.

E. Billing and Payment. Contractor shall submit to the County, on a monthly basis, an itemized statement of all services and work described in Attachment A, which were done at the County's request. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. Alternatively, Contractor may submit a single request for payment corresponding to a single incident of service or work performed at the County's request. All statements submitted in request for payment shall identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Invoicing shall be informative but concise regarding services and work performed during that billing period. Upon finding that Contractor has satisfactorily completed the work and performed the services as requested, the County shall make payment to Contractor within 30 days of its receipt of the itemized statement. Should the County determine the services or work have not been completed or performed as requested and/or should Contractor produce an incorrect statement, the County shall withhold payment until the services and work are satisfactorily completed or performed and/or the statement is corrected and resubmitted.

If Exhibit 4 ("Invoicing, Payment, and Retention") is attached to this Agreement, then the language contained in 4 shall supersede and replace this paragraph 3.E. in its entirety.

F. Federal and State Taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County shall withhold California state income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety-nine dollars (\$1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board.

4. WORK SCHEDULE

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A that are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor, in arranging his/her schedule, will coordinate with County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments, for Contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits that are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC

The Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, support services and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, uniforms, vehicles, reference materials, furniture, appliances, etc. provided to Contractor by County pursuant to this Agreement is, and at the termination of this Agreement remains, the sole and exclusive property of the County. Contractor will use reasonable care to protect, safeguard

and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, that is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, videotapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind that are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKERS' COMPENSATION

Contractor shall provide Statutory Workers' Compensation insurance coverage and Employer's Liability coverage for not less than \$1 million (\$1,000,000.00) per occurrence for all employees engaged in services or operations under this Agreement. Any insurance policy limits in excess of the specified minimum limits and coverage shall be made available to County as an additional insured. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents, and subcontractors.

9. INSURANCE

A. Contractor shall procure and maintain, during the entire term of this Agreement or, if work or services do not begin as of the effective date of this Agreement, commencing at such other time as may be authorized in writing by the County Risk Manager, the following insurance (as noted) against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, its agents, representatives, employees, or subcontractors:

General Liability. A policy of Comprehensive General Liability Insurance which covers all the work and services to be performed by Contractor under this Agreement, including operations, products and completed operations, property damage, bodily injury (including death) and personal and advertising injury. Such policy shall provide limits of not less than \$1,000,000.00 per claim or occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

Automobile/Aircraft/Watercraft Liability Insurance. A policy of Comprehensive Automobile/Aircraft/Watercraft Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than \$1,000,000.00 per claim or occurrence applicable to all owned, non-owned and hired vehicles/aircraft/watercraft. If the services provided under this Agreement include the transportation of hazardous materials/wastes, then the Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance covering materials/wastes to be transported by Contractor pursuant to this Agreement. Alternatively, such coverage may be provided in Contractor's Pollution Liability policy.

Professional Errors and Omissions Liability Insurance. A policy of Professional Errors and Omissions Liability Insurance appropriate to Contractor's profession in an amount of not less than \$1,000,000.00 per claim or occurrence/ \$2,000,000.00 general aggregate. If coverage is written on a claims-made form then: (1) the "retro date" must be shown, and must be before the beginning of

contract work; (2) insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work; and (3) if coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a “retro date” prior to the contract effective date, then Contractor must purchase “extended reporting” coverage for a minimum of five years after completion of contract work.

- Pollution Liability Insurance. A policy of Comprehensive Contractors Pollution Liability coverage applicable to the work being performed and covering Contractor’s liability for bodily injury (including death), property damage, and environmental damage resulting from “sudden accidental” or “gradual” pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall provide a limit no less than \$1,000,000.00 per claim or occurrence/ \$2,000,000.00 general aggregate. If the services provided involve lead-based paint or asbestos identification/remediation, the Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

B. Coverage and Provider Requirements. Insurance policies shall not exclude or except from coverage any of the services and work required to be performed by Contractor under this Agreement. The required polic(ies) of insurance shall be issued by an insurer authorized to sell such insurance by the State of California, and have at least a “Best’s” policyholder’s rating of “A” or “A+”. Prior to commencing any work under this agreement, Contractor shall provide County: (1) a certificate of insurance evidencing the coverage required; (2) an additional insured endorsement for general liability applying to the County of Mono, its agents, officers and employees made on ISO form CG 20 10 11 85, or providing equivalent coverage; and (3) a notice of cancellation or change of coverage endorsement indicating that the policy will not be modified, terminated, or canceled without thirty (30) days written notice to the County.

C. Deductible, Self-Insured Retentions, and Excess Coverage. Any deductibles or self-insured retentions must be declared and approved by Mono County. If possible, the Insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to Mono County, its officials, officers, employees, and volunteers; or the Contractor shall provide evidence satisfactory to Mono County guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Any insurance policy limits in excess of the specified minimum limits and coverage shall be made available to County as an additional insured.

D. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance (including Workers’ Compensation) meeting all the requirements stated herein and that County is an additional insured on insurance required of subcontractors.

10. STATUS OF CONTRACTOR

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as an independent contractor, and not as an agent, officer, or employee of the County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, the County, except as expressly provided by law or set forth in Attachment A. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not, under any circumstances, be construed to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers and employees are, and at all times during the term of this Agreement shall represent and conduct themselves as, independent contractors, and not employees of County.

11. DEFENSE AND INDEMNIFICATION

Contractor shall defend with counsel acceptable to County, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs that are caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance and shall survive any termination or expiration of this Agreement.

12. RECORDS AND AUDIT

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, micrographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, that County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.

14. TERMINATION

This Agreement may be terminated by County without cause, and at will, for any reason by giving to Contractor thirty (30) calendar days written notice of such intent to terminate. Contractor may terminate this Agreement without cause, and at will, for any reason whatsoever by giving to County thirty (30) calendar days written notice of such intent to terminate.

Notwithstanding the foregoing, if this Agreement is subject to General Conditions (set forth as an Exhibit hereto), then termination shall be in accordance with the General Conditions and this paragraph 14 shall not apply.

15. ASSIGNMENT

This is an agreement for the personal services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of the County. Further, Contractor shall not assign any moneys due or to become due under this Agreement without the prior written consent of the County.

16. DEFAULT

If the Contractor abandons the work, or fails to proceed with the work and services requested by the County in a timely manner, or fails in any way as required to conduct the work and services as required by the County, the County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination. Contractor shall have 30 days to correct the default.

17. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 23 below.

18. CONFIDENTIALITY

Contractor agrees to comply with various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential, all such privileged, restricted or confidential information and records obtained in the course of providing the work and services under this Agreement. Disclosure of such information or records shall be made by Contractor only with the express written consent of the County.

19. CONFLICTS

Contractor agrees that he/she has no interest, and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services under this Agreement. Contractor agrees to complete and file a conflict-of-interest statement.

20. POST-AGREEMENT COVENANT

Contractor agrees not to use any confidential, protected, or privileged information that is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two (2) years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

21. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

22. FUNDING LIMITATION

The ability of the County to enter into this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to terminate, reduce, or modify this Agreement, or any of its terms within ten (10) days of notifying Contractor of the termination, reduction, or modification of available funding. Any reduction or modification of this Agreement effective pursuant to this provision must comply with the requirements of paragraph 23.

23. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change order is in written form, and executed with the same formalities as this Agreement or in accordance with delegated authority therefor, and attached to the original Agreement to maintain continuity.

24. NOTICE

Any notice, communication, amendments, additions or deletions to this Agreement, including change of address of any party during the term of this Agreement, which Contractor or County shall be required, or may desire to make, shall be in writing and may be personally served, or sent by prepaid first-class mail or email (if included below) to the respective parties as follows:

County of Mono:

Wendy Sugimura
437 Old Mammoth Road
PO Box 347
Mammoth Lakes, CA 93546
WSugimura@mono.ca.gov

Contractor:

Tania Treis
Panorama Environmental, Inc.
1 Embarcadero Center, Suite 740
San Francisco, CA 94111
Tania.Treis@panoramaenv.com

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless executed in writing by the parties hereto.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS DAY OF _____, _____.

COUNTY OF MONO

CONTRACTOR

By: _____

By: _____

Dated: _____

Dated: _____

Taxpayer's Identification or Social Security
Number:

APPROVED AS TO FORM:

Mono County Counsel

APPROVED BY RISK MANAGEMENT:

Risk Manager

ATTACHMENT A

**AGREEMENT BETWEEN COUNTY OF MONO
AND PANORAMA ENVIRONMENTAL, INC.
FOR THE PROVISION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT ANALYSIS OF
WATER LEASES/TRANSFERS IN THE WALKER RIVER BASIN, MONO COUNTY,
CALIFORNIA SERVICES**

TERM:

FROM: NOVEMBER 14, 2017 TO: DECEMBER 31, 2019

SCOPE OF WORK:

The preparation of policies and alternatives, and preparation of environmental documentation meeting California Environmental Quality Act requirements, addressing a proposed water transaction policy for the leasing or transfer of water rights under the Walker Basin Restoration Program, as more thoroughly described in Contractor's Approach to Scope of Work, which is attached as Exhibit A-1 and incorporated by this reference..

Exhibit A-1
PANORAMA
ENVIRONMENTAL, INC.
APPROACH TO SCOPE

OF WORK

OVERVIEW

This scope of work addresses all the elements included in the “Scope of Work Summary” in the RFP. We have reorganized the tasks to keep major elements together in a single task, such as preparation of the policies and alternatives, and preparation of the EIR. Tasks may overlap temporarily, as indicated in the descriptions.

TASK 1 DELIVERABLES:

1. Kickoff Meeting Notes
2. On-going meeting agendas and notes
3. Monthly progress reports and invoices

TASK 1 TEAM KICK-OFF, COORDINATION, AND MANAGEMENT

Overview

This task includes coordination with the County, NFWF, and RCD as needed to collect data, collaborate on approaches, and review interim results.

Subtask 1.1: Attend a Kick-off Meeting The project will commence with a kick-off meeting attended in-person by Panorama’s management team. We would include Amy Merrill from Stillwater Science and Bruce Aylward from Ecosystem Economics on the phone. We assume that the meeting will be attended by County staff and NFWF, if appropriate. Key topics to discuss will include goals, schedule, roles, and expectations for preparation of the EIR and General Plan Amendment. We will also discuss the communication protocols and the scope of work to ensure mutual understanding of roles and critical path items. We assume that the location and agenda for this meeting will be set by County Planning staff. Panorama will prepare an agenda for the meeting and meeting notes to capture key topics discussed and action items.

Subtask 1.2: Project Coordination and Management

Project management will be ongoing for the duration of the project. This task includes biweekly meetings via phone conference and invoice summaries and support materials (progress reports) submitted monthly in a format acceptable to the County. We assume meetings will be held via phone calls and web-conferences, up to the hours allocated in the budget. This task includes the time to update schedule and budget tracking systems, and maintain the Administrative Record for the project.

Given the complexity of this project, our approach will be to maintain frequent communication and provide updates as we move ahead with the policy development and the EIR.

California Environmental Quality Act Analysis of Water Leases/Transfers in the Walker River Basin

TASK 2 TECHNICAL STUDIES AND APPROACH TO TECHNICAL ANALYSES

Overview

This section includes the scope of work for the technical analysis required pursuant to CEQA. The technical analyses will be conducted as part of the EIR, with a discussion of the Environmental Setting, Regulatory Setting, and Impacts and Mitigation presented in the EIR section. This task identifies the scope for all technical reviews, including field studies where applicable, data collection, and analysis methodologies. We currently foresee that each technical analysis will be presented in the CEQA EIR section format (rather than in separate technical studies). Task 4 includes the compilation of these analyses into the EIR.

TASK 2 DELIVERABLES:

1. Memorandums and periodic updates, as applicable
2. Technical Analyses in the EIR (see Task 4)

The preparation of other EIR sections, including the Project Description, Alternatives, and Cumulative Impacts, are described under Task 4.

The impact of climate change on precipitation and water resource reliability is an important element of the water transaction program. Panorama’s recommended approach to address uncertainty under climate change scenarios is to identify a range of predicted outcomes that reflect variability of dry and wet years. The impact analysis in the EIR can reflect a range of expected outcomes that may occur as a result of climate change. Mitigation strategies can be defined to incorporate flexibility and adaptive management in addressing the potential range of uncertainty.

Subtask 2.1 Biological Resources

Overview

Species of concern that may occur in Antelope and Bridgeport Valleys and which could be either adversely or beneficially impacted by a water transaction program include:

- Lahontan cutthroat trout (federally threatened)
- Native fish species
- Greater sage grouse and habitat (federal candidate species)
- Yellow warbler (CDFW species of special concern)
- Pygmy rabbit (CDFW species of special concern)
- Western white-tailed jackrabbit (CDFW species of special concern)
- American badger (CDFW species of special concern and fur-bearing mammal)
- Rare plants with California Rare Plant Rank (CRPR) ranking of 1B.1 and 2B.1 (no state or federally listed plants occur in the area)

The existing modeling by Stillwater Science on habitat conditions will be used to predict the habitat suitability and associated beneficial or adverse impacts to species of concern based on each species habitat requirements and known range in the region. Panorama and Stillwater have proposed ways to fill several information gaps recognized during production of the

MONO COUNTY

Feasibility Report in 2014. Stillwater and Panorama will work with Mono County staff to refine the plans described below as appropriate to address key information needs.

Baseline Data Collection and Analysis

Focused Rare Plant Surveys

Stillwater Sciences will obtain additional information on the distribution of rare plants to fill information gaps that were identified in the Mono County RFP and the 2014 Feasibility Assessment. Since surveys for the entire water transaction program (project) area are infeasible, we propose targeted rare plant surveys in a subset of the project area, selected based upon the following criteria:

1. Areas considered most vulnerable to impacts in a Water Transaction Program as described in the 2014 Feasibility Assessment
2. Areas expected, based upon vegetation mapping, to support sensitive wildlife species
3. Areas that are accessible to field survey

While these rare plant community surveys will not cover the entire area that could be affected by a water transaction program, they will provide information on the vegetation structure and composition in which these species may occur, will improve resolution of the mapped vegetation types provided in the 2014 Feasibility Assessment, and will increase the extent of area within the Basin that has been surveyed for vegetation and wildlife habitat suitability.

Wildlife Habitat Assessment

Stillwater Sciences will review up-to-date information regarding documented occurrences and habitat range for special-status wildlife species in the project area. Stillwater will coordinate with Mono County to obtain new or updated information regarding presence and distribution of special-status species in the project area, since the County participates in Local Area Working Group efforts to implement and monitor the Bi-State Action Plan. The EIR impact analysis is expected to require evaluation of: greater sage-grouse (*Centrocercus urophasianus*), yellow warbler (*Dedroica petechial*), pygmy rabbit (*Brachylagus idahoensis*), western white-tailed jackrabbit (*Lepus townsendii townsendii*), American badger (*Taxidea taxus*), and mule deer (*Odocoileus hemionus*). The list of species and potential to occur in the area will be updated with any new information and any new species listed will be researched and the habitat will be described.

Stillwater Sciences will conduct one targeted two-day field visit, during which wildlife biologists will focus on evaluating habitat suitability, and mapping suitable habitat extent, for greater sage grouse (including breeding and brood-rearing habitats) based on presence of suitable vegetation communities. These surveys will be conducted in a subset of the project area, that includes accessible lands, most vulnerable to impact, and that support vegetation types that could support the target species. We will use this information to refine our understanding of vegetation types that support the species. Based on the updated vegetation

MONO COUNTY

map, Stillwater will then draft maps of potentially suitable sage grouse habitat in the project area. These maps will help inform the impact assessment for the project area.

Update Existing Vegetation Mapping

Stillwater Sciences will update the existing baseline vegetation type descriptions and mapping using plant community composition data collected during the focused species surveys. To maximize the extent of the budget, Panorama and Stillwater will also attempt to combine field visits for project meetings with visits for wildlife habitat assessments. These data will be used to update and refine the current vegetation types described in the 2014 Feasibility Assessment. Work products will include revised vegetation type descriptions and associated labeling on maps for Antelope and Bridgeport valleys, and refining areas of the existing vegetation map that were coarsely mapped in 2014, including riparian corridors and moist vs. wet grassland types in Bridgeport Valley. Information on vegetation composition and structure will be further tailored using new data to link mapped vegetation types to special status plant and animal distributions.

Impacts and Mitigation

Stillwater Sciences will prepare the Biological Resources impact analysis for the EIR in accordance with CEQA. The impact analysis will include evaluation of impacts on:

- Special-status species including greater sage grouse and Lahontan cutthroat trout
- Wetlands
- Sensitive vegetation communities and riparian areas
- Wetlands
- Wildlife connectivity corridors
- Conservation plans (i.e., Greater Sage Grouse Conservation Plan)

The EIR will use the CEQA significance criteria contained in Appendix G and may include additional project-specific significance criteria at the request of Mono County. Since the program includes many unknowns, the criteria for impacts will be defined as the threshold at which change to habitats would significantly impact the habitat values or the population of special-status species the habitats support.

Stillwater Sciences will prepare mitigation measures for biological resources for the EIR, as necessary. Commensurate with the effects, mitigation measures will be designed such that they avoid, minimize, and self-mitigate to the maximum extent feasible. Where feasible, mitigation measures will be consistent with the mitigation strategies in the Mono County General Plan EIR, and will emphasize adaptive management, based upon comprehensive monitoring. Key impacts identified in the 2014 Feasibility Assessment and our approach to analysis are described below.

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Wetlands

Reduction in irrigation flows to agricultural fields in Antelope and Bridgeport Valleys could reduce runoff to adjacent wetland areas or reduce groundwater availability to wetland resources. Wetlands require inundation or saturation by groundwater or surface water. In areas where the implementation of transactions could result in declines in groundwater elevations, wetland habitats that are dependent on those groundwater resources would likely convert to drier habitat communities over time. The project may also result in reduced irrigation flows to wetlands downstream of irrigated areas. Stillwater will identify wetland areas to be protected and will identify the hydrologic response unit (HRU) that is contributing to that wetland. It is



anticipated that mitigation may include groundwater and surface water monitoring in wetland and other critical resource areas, with action triggers to ensure that transfers do not significantly impact wetlands or other sensitive resources. We have included hydrologists at Stillwater Sciences on our team to review DRI, University of Nevada, and USGS existing data and models for the area and to assist with the preparation of a mitigation and monitoring program.

Noxious Weed Control

The change in vegetation communities from irrigated land to fallow land could potentially result in introduction of noxious weeds as the vegetation communities adapt to drier conditions. Panorama and Stillwater Sciences will evaluate the change in vegetation community types and will use data from the lower Walker Basin existing water transaction program to evaluate the magnitude of the impact from noxious weed introduction. Potential sources of noxious weeds in the surrounding area will be evaluated to identify the types of noxious weeds that could be introduced into the area. Mitigation can be defined in the EIR to manage noxious weeds. Alternatively, the General Plan policies could require land owners to monitor and remove noxious weeds.

Conflict with Existing Conservation Plans

There are no approved habitat conservation plans or natural community conservation plans that cover the Walker Basin portion of Mono County. The water transaction program will be evaluated for consistency with the Greater Sage Grouse Conservation Plan for Nevada and Eastern California (2004). Consistency with conservation plans will be addressed in the biological resources (and land use) sections of the EIR. The impact on greater sage grouse would be evaluated and strategies will be defined in the EIR to avoid, minimize, and mitigate significant impacts on the species.



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Subtask 2.2 Visual Analysis

Overview

Implementation of the policies could result in changes in vegetation types to reflect greater areas of sage scrub and reduced areas of grasslands or wetlands due to reduced irrigation. The agricultural areas of Antelope and Bridgeport Valleys are located along a portion of U.S. 395 that is a designated scenic highway and visual impacts are a key issue to be addressed in the EIR.



Baseline Data Collection and Analysis

Panorama will define key observation points (KOPs) within the watershed through consultation with Mono County and community members. Panorama will obtain baseline photographs at up to ten KOPs within the project area to define the baseline aesthetic resource condition. KOPs will include views of Antelope and Bridgeport Valleys from Highway 395, a designated scenic highway. KOPs may also include any scenic vistas along Highway 395 that provide views of the project area, and potentially the Mono County Courthouse, a historic landmark located in Bridgeport, California

Impacts and Mitigation

Aesthetic impacts will be analyzed using the following evaluation criteria:

- General visibility (foreground, middleground, background) and how it affects the viewer experience
- Visibility and duration of view from area roads, scenic highways, and scenic vistas
- Visibility from other surrounding land uses
- General contrast ratings relative to landscape setting

Panorama will use the results of the vegetation community modeling (above) to assess the change in visual character and quality at each key observation point. It is expected that the drier vegetation communities would be similar in appearance and visual quality to the surrounding non-irrigated open space vegetation communities in the region. Panorama would use photos of vegetation communities from landscape areas surrounding the Antelope and Bridgeport Valleys to represent the resulting visual character and quality after implementation of the project.

The visual changes would also be very closely tied to the habitat value changes. We would, therefore, use the results of the assessment of habitat value changes to determine how transactions could impact habitat. Panorama would coordinate with Mono County to define the CEQA threshold and mitigation approaches so that the project would result in an acceptable level of change. Mitigation may include monitoring of the fallow lands and adaptive management to reduce introduction of invasive weeds. The change in visual quality may not be

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significant depending on the scale of the water transaction program and the availability of shallow groundwater in the absence of irrigation.

Subtask 2.3 Agriculture

Overview

Panorama understands from discussions with Wendy Sugimura that the Mono and Inyo County Agricultural Commissioner is conducting an economic impact assessment of agricultural impacts for the water transaction program. AMP Insights, under contract to Panorama, will review the Mono and Inyo County Agricultural Commissioner's economic impact study and verify the study methods and findings. Panorama will integrate the results of the Agricultural Commissioner's study with respect to impacts on agricultural production in Antelope and Bridgeport Valley. All findings associated with direct economic impacts are outside the scope of the CEQA environmental impact analysis and will not be included in the EIR. Panorama will evaluate impacts on agricultural land use designations including Williamson contracts. Panorama can work with the County to define a significance threshold for impacts on agricultural production and agricultural land loss, as appropriate.

Impacts and Mitigation

Panorama will evaluate the potential change in agricultural uses including reduction in yield, potential changes in agricultural crop types, and potential changes to non-agricultural land uses. AMP Insights is experienced in evaluating agricultural changes from water transfers and will provide expert input on potential changes in crop types and yields from reduced irrigation flows to assess the potential impacts on agricultural activities. Panorama will also evaluate potential impacts on lands under Williamson Act contract consistent with CEQA Guidelines Appendix G. The General Plan policies may include considerations to ensure that the transfer does not undermine the agricultural economy, advance development of non-agricultural uses, nor contribute to the loss of open space. We understand that scenarios considered included fallowing of fields or changes in use to open space. If loss of agricultural lands is a major issue to the County, mitigation could focus on minimizing that loss but allowing for transfers that allow for agricultural use with change in water management, such as using technology to increase efficiency of water use (e.g., fiber optics to sense areas that need watering), or crop changes to less water intensive crops with higher yield prices per acre.

To address County concerns about land use change, our team would work with County staff to define a CEQA threshold for an acceptable level of change both to the types of crops and to any conversion of agricultural land to non-agricultural uses. Panorama will also define mitigation if needed to ensure the program implementation results in an acceptable level of change in agricultural uses.

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Subtask 2.4 Hydrology

Overview

Irrigation flows in Antelope and Bridgeport Valleys likely contribute to groundwater recharge. Other concerns around groundwater include 1) leasing or selling of groundwater, 2) exploitation of groundwater as a substitute for surface water irrigation when water users enter into water lease or sale, and 3) reduced irrigation could decrease recharge water into the deep aquifer. The Feasibility Assessment recommends that groundwater is not included in the transfer program and that substitution of groundwater for direct diversion would not be allowed. At the current time, information on aquifer interactions with irrigation water and shallow ground water are very limited. Panorama intends to define an adaptive management strategy that will allow Mono County to incorporate and learn from new data as it becomes available. The strategy will also include action criteria or trigger levels that are protective of Mono County groundwater uses.

Impacts on water rights to downstream water users are addressed through California water law and the Walker River Decree. CEQA requires analysis of impacts on the environment and not water rights. The impact on water rights in the absence of other environmental impacts is outside of the scope of CEQA and would be addressed separately under the Walker River Decree, Decree Court, and Federal Water Master. However, the legal ramifications would be factored into the development of the policies for the General Plan. We would rely on the County’s legal counsel for guidance on legal matters as it pertains to development of the Policies and the overall water transfer program.

Figure 1 Schematic of the Ground and Surface Water Parameters Considered in the Decision Support Tool

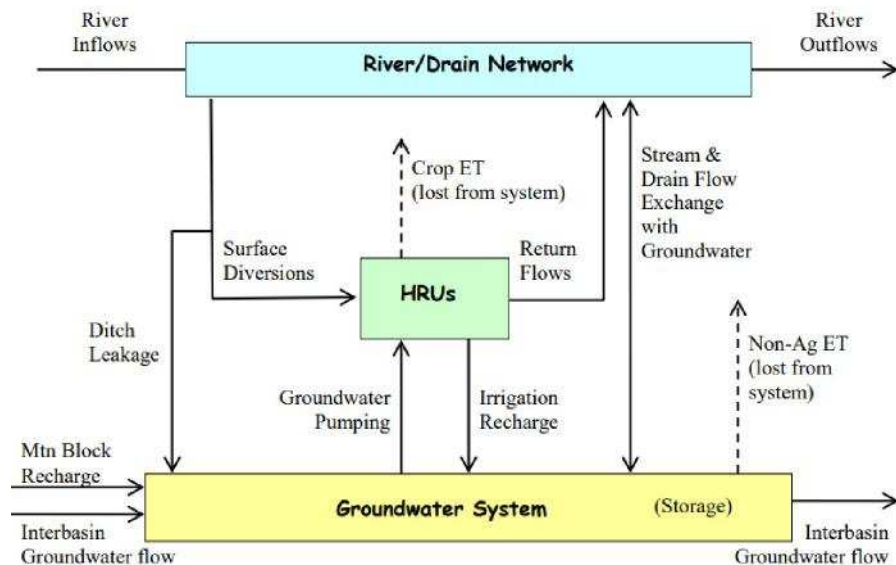


Figure From: USGS and DRI Presentation: Decision Support Tool for the Walker River Basin, Greg Pohll, March 29, 2016

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Baseline Data Collection and Analysis

Panorama understands from the RFP and communication with Shannon Ciotti that the Walker Basin hydrologic model prepared by DRI for Nevada will not be expanded to California. Panorama is aware that the USGS has collected groundwater data through installation of piezometers, a well test, and seismic study to define the aquifer properties. These data can be incorporated into the baseline data analysis and used to update the hydrologic setting included in the 2014 Feasibility Assessment. The baseline hydrologic setting will be analyzed separately for Antelope Valley and Bridgeport Valley because each valley has separate hydrologic conditions and circumstances including availability of water resources and depth to groundwater.

Impacts and Mitigation

Panorama will evaluate the project's potential impacts on hydrology using the significance criteria contained in Appendix G of the CEQA guidelines or other project specific criteria if requested by Mono County. Specific impacts that will be evaluated in the EIR include the impact of the project and alternative scenarios on:

- Groundwater resources including groundwater elevation and storage as a result of reduced irrigation flows and associated irrigation recharge in Antelope and Bridgeport Valleys
- Off-site flooding as a result of decreased diversion of irrigation flows and increased delivery of water to downstream areas on the West and East Walker River and the lower Walker River

Panorama and Stillwater will use the hydrologic data compiled in the 2014 Feasibility Assessment and information obtained during recent studies of the project area to define the expected impacts on groundwater resources. The impact analysis will be supported by existing data on groundwater interactions and impacts observed from implementation of the Walker Basin water transaction program in Nevada. The existing water transaction program on the lower Walker River will support the assessment of the magnitude of impacts that could be expected to occur from the water transfer. Mitigation would likely include monitoring and an adaptive management strategy to address potentially significant impacts. The mitigation strategy will be discussed with Mono County during development of the EIR.

Subtask 2.5 Land Use Analysis

Overview

Panorama will evaluate any potential impacts associated with land use conversion from agricultural uses to other potential uses. Panorama expects that land use conversions or changes would require a separate discretionary approval from Mono County and would not be a direct effect of the water transaction program. Panorama will review the County's existing General Plan policies and evaluate conflicts between the County's General Plan and the water transaction policy. It is anticipated that the General Plan Amendment would resolve any conflicts with the General Plan.

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Panorama will evaluate the impact of the project on recreational resources including recreational fishing. The water transaction program does not involve physical infrastructure that would impact recreational resources or create a need for recreational resources. The program could change the amount and duration of water storage in upstream and downstream reservoirs and would change in stream flows on the Walker River where recreational fishing is conducted. The project would likely result in beneficial impacts on recreational fishing due to increase in downstream flows; therefore, mitigation is not anticipated.

Impacts and Mitigation

Land Use

Panorama will analyze impacts on land use consistent with the thresholds defined in CEQA Guidelines Appendix G. Specifically, Panorama will evaluate whether the project would conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project. This analysis will include a consistency analysis with the General Plan policies and Area Plan for Antelope Valley and Bridgeport Valley. There are no adopted habitat conservation plans or natural community conservation plans in Antelope or Bridgeport Valleys that the project could conflict with. Potential conflicts with the Greater Sage Grouse Conservation Plan will be analyzed in the biological resource impact analysis, as described above.

Recreation

The significance criteria included in Appendix G of CEQA Guidelines do not directly address the impact to recreational resources that would occur as a result of the project or public concerns about impacts on recreational fishing. Panorama will coordinate with Mono County staff and legal counsel to define supplemental significance criteria that are appropriate to evaluating the impacts of the project on recreational fishing.

Subtask 2.6 Air Quality and Greenhouse Gas/Climate Change Analysis

Overview

Potential air quality impacts are limited to dust emissions resulting from the fallow agricultural fields because no equipment use or other emissions sources would be included in the water transaction program. Greenhouse gas impacts could occur as a result of the change in vegetation communities, drying of wetland areas, and release of sequestered carbon.

Impacts and Mitigation

Panorama will use the results of the vegetation community/habitat change modeling and data on dust emissions from fallow agricultural fields in similar environments to evaluate the magnitude of potential dust emission impacts that could result from the water transfer program in Antelope and Bridgeport Valleys. Fallow agricultural areas and dust monitoring in the lower Walker Basin water transaction program may be used to gain information on potential dust impacts. Panorama will define mitigation to address significant dust impacts, if any.

The greenhouse gas impact analysis will include an evaluation of changes in carbon sequestration rates due to changes in vegetation community composition using published

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values for similar vegetation communities. The analysis will also evaluate the impact from carbon release due to drying of wetland areas. Stillwater will work with Panorama to estimate expected changes in net GHG emissions associated with program implementation. Stillwater has conducted recent research and numerical analysis of changes in carbon sequestration and greenhouse gas impacts resulting from changes in vegetation communities to adapt to drier conditions.

Mitigation strategies may include monitoring and adaptive management of air quality conditions; planting of fallow areas to reduce fugitive dust and improve carbon sequestration; and potential application of water on an as needed basis for dust control.

Subtask 2.7 Wildfire

Baseline Data Collection and Analysis

Panorama will obtain baseline data on fire risk from CalFire and will evaluate the existing incidence of fire in the region. Panorama will coordinate with applicable fire protection agencies, including the California Department of Forestry and Fire Protection and Mono County Fire Protection Districts to define the baseline fire hazard and approaches to fire protection.

Impacts and Mitigation

The change in vegetation communities/habitat types that would likely result from the water transaction program will be assessed to evaluate the change in fire risk. Panorama's team includes Carol Rice, who is an expert in fire behavior modeling. Changes in fire behavior and fire risk could be assessed qualitatively or through modeling, if needed. The change in vegetation type will be an output of from Stillwater Science's model of habitat changes. Mitigation will be defined through coordination with the Fire Protection Districts and Mono County.

Subtask 2.8 AB 52 Consultation

Panorama would assist the County with AB 52 compliance and consultation with Tribes as needed. Panorama would send all letters of notification to Tribes that have requested Mono County notification at the beginning of the project. Panorama would then assist Mono County in Tribal consultation, upon request from the Tribes.

The California Program would involve the transfer of water rights without any physical infrastructure changes. Installation of new infrastructure would involve a separate approval from the County and separate evaluation under CEQA. It is assumed that irrigation head gates are currently operable and the Program would not require any surface disturbance to install new or replacement infrastructure. The project would not result in impacts on cultural resources because no ground



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disturbance would be required to conduct the water transfer and would not necessitate changes in the agricultural infrastructure. We assume that historical and archaeological resource impacts can be focused out of the EIR.

TASK 3 DEVELOPMENT OF THE GENERAL PLAN POLICIES AND ALTERNATIVES

Subtask 3.1 Assess the Status of County Policy to Develop Constraints Analysis for Policies Our team would assess the current status of County policy related to water transactions (e.g., how a water transaction would be handled under current policy) to determine potential issues, opportunities, constraints, and areas for amendment. We would prepare a memorandum summarizing our policy assessment. We would expect that County legal counsel will provide input as we have not included legal counsel on our own team.

TASK 3 DELIVERABLES:

1. Draft General Plan Policies
2. Alternatives to the General Plan Policies
3. Community and Stakeholder Plans, Outreach and Meeting Materials, and Reports or Memorandums on Outcomes
4. Final General Plan Amendment Language

Out-of-basin extractive transfers currently require permits from Mono County Planning Commission. The County could consider permanent transfers under the program under the same rules and requirements. Per the Feasibility Assessment, another approach would be to set a limit for the amount of water that could be permanently dedicated to in-stream uses in Nevada.

Panorama would also assess conservation policies, and would assume that these policies would take precedence over water transactions. If appropriate, Panorama would identify areas where policies could limit enrollment in the water transaction program due to incompatibility with the policies.

Subtask 3.2 Develop General Plan Policies and Alternatives

Development of the policies will essentially require framing and defining the County's water transaction program. Based on the Memorandum of Understanding (MOU) between NFWF and the County, Panorama assumes that the Mono County RCD will work with the County to define the water transaction program; however, we anticipate that Panorama will have a role in the definition of that program, since it is so integral to the environmental and policy constraints.

We have included Bruce Aylward of Ecosystem Economics on our team because of his current involvement in the Walker Basin program and past contribution to the Feasibility Assessment. He is very familiar with the policies that would apply to the water transaction program and can provide expert knowledge and guidance to the County. The development of the policies will be a balance between the consideration of the environmental constraints, including physical constraints, policy constraints, and the constraints around limited data; legal constraints regarding the process to establish surface water rights transfers; economic implications; and

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input from public outreach and stakeholders. Since the CEQA review will be based off the policies, the policies will need to be established early in the process. Bruce, along with staff from Stillwater Science and Panorama, propose to define the policy goals and approaches that incorporate the environmental resource values that are important to the County for conservation. The monitoring system and adaptive management strategy will be important components of the program (defined by the policies and approaches). The policies would also address how the program would incorporate new research and information from DRI, USGS, and University of Nevada, Reno.

Based on an initial review of the County's General Plan and policies, Panorama anticipates that the County will need to amend the Conservation/Open Space Element of the General Plan and specifically Policy 3.E. regarding out-of-basin water transfers to address participation in the Walker Basin Restoration Program.

This task includes preparation of Draft General Plan policies, development of General Plan policy alternatives, and development of a preferred General Plan Amendment. This task includes up to two in-person meetings with Mono County to develop the General Plan policies and alternatives. We would also ensure compatibility/consistency with the 2015 General Plan EIR, including alternatives and mitigation strategies, and local CEQA policies and practices.

Subtask 3.3 Community and Stakeholder Outreach on the Plan Policies and General Plan Amendment

Prepare Mailing and Distribution List

Panorama will develop a project mailing list that will include agencies, community groups, and stakeholders including property owners and water rights holders that may be affected by the water transaction program. At a minimum, the mailing and distribution list will include the following agencies and organizations:

- Mono County Planning Commission
- Collaborative Planning Team
- Antelope Valley and Bridgeport Regional Planning Advisory Committees
- Bridgeport Public Utility District
- Antelope Valley Mutual Water Company
- Area ranchers
- Mono County Resource Conservation District
- Mono and Inyo County Agricultural Commission
- Lahontan Regional Water Quality Control Board
- Great Basin Unified Air Pollution Control District
- California Department of Fish and Wildlife
- U.S. Fish and Wildlife Service
- U.S. Bureau of Land Management
- U.S. Forest Services
- Natural Resources Conservation Service

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Public Involvement Plan

Panorama has included an optional task of preparing a Public Involvement Plan in our approach to stakeholder engagement on the General Plan Policies to ensure that our outreach efforts are targeted at reaching key stakeholder groups. The Public Involvement Plan will be used to support productive public participation in the environmental review process.

Preparation of the Public Involvement Plan will include:

- Identification of all stakeholder groups and potentially affected parties including agricultural land owners and existing holders of water rights that could participate in the water transaction program
- Understanding of the concerns held by each of the stakeholder groups and of the data that are most important to them
- Understanding of which outreach approaches will enable the stakeholder groups to participate most effectively and which may hinder their participation
- Assessment of the willingness or capacity of probable participants to engage productively in the environmental review process
- The location of suitable venues for public meetings
- Methods for sharing of information (e.g., print, website, emails, social media)
- Methods for documenting the outreach efforts and responses in order to create a solid record for the project

Panorama has set a budget amount for public outreach and we will work with the County to define roles for implementation of the stakeholder and public outreach components. At a minimum, we will attend two open houses/workshops/or meetings. Each forum may use a different format to solicit information in different ways. For example, one meeting may include a charrette scenario where five or six stations are set up, each with a focused topic that will be addressed in the policies. Participants will spend 10 minutes at each station providing feedback. We also propose using new media as a cost-effective method of outreach and to update the stakeholders and to receive continuous feedback.

Present Draft Policies to Stakeholders

Panorama would present the draft policies to the stakeholder outreach groups and receive input. Panorama proposes to conduct stakeholder outreach in tandem with the scoping for the EIR to minimize schedule and maximize output. The program and policies would be modified based on County and stakeholder feedback.

Subtask 3.4 Revise General Plan Policies based on Input and CEQA Outcomes

This task would likely occur concurrent with preparation of the Final EIR in Task 4. We would review all community and agency/stakeholder input, review the outcome of the environmental analysis, and revise the Preferred General Plan Amendment to reflect any changes.

TASK 4 PREPARATION OF THE EIR

Overview of Approach to EIR

A CEQA impacts analysis must be carried out by Mono County before water transactions can commence in California. Given budget and time constraints, Panorama’s approach to preparing the EIR relies largely on use of existing information. We have proposed to include the collection of some supplemental information on biological resources and species occurrences, and conduct analysis regarding greenhouse gases based on newer data and analysis by Stillwater Sciences (see Task 2 above). Panorama will also incorporate new data such as recent UNR and USGS hydrologic studies and the agricultural economic evaluations currently being conducted by the County Agricultural Commissioner.

TASK 4 DELIVERABLES:

1. Draft and Final Notice of Preparation and Meeting Materials
2. Mailing and Distribution List
3. Scoping Report
3. Administrative Draft EIR
4. Check Draft EIR
5. Draft EIR
6. Notices and Public Hearing Materials
7. Response to Comments
8. Final EIR

The Feasibility Assessment suggested two approaches to CEQA:

- Scaling the initial program to include only temporary water leasing and conduct a CEQA analysis based upon that limited scope
- Anticipating a tiered CEQA approach that could include permanent acquisitions, with the analysis identifying information gaps that would need to be addressed. If gaps for permanent acquisitions are identified, the complete analysis of acquisition could be completed at a later date, tiering off the initial CEQA document.

Since additional funding has not been made available to complete hydrologic modeling in the California portions of the basin and the pilot study is not expected to move forward prior to or during preparation of the EIR, information gaps will remain during the EIR preparation. We propose undertaking the second CEQA option, in order to get the most out of the CEQA process. A legally defensible document can be prepared with a tiered approach, as long as adequate significance thresholds are established for a permissible response in the environment. We would also need to demonstrate through the development of the program, that the appropriate monitoring and adaptive management can be implemented to demonstrate that the significance thresholds are not exceeded. A Hydrologic and Biological Mitigation and Monitoring Program (HBMMP) with adaptive management procedures will be implemented to mitigate potential impacts on key biological resources. The EIR will be a Focused Program EIR, addressing the key environmental resource topics that could be impacted by the water transfer: Agriculture, Aesthetics, Biology, Hydrology and Water Quality, Air Quality and Greenhouse Gases, Fire Hazards, and Recreation and Land Use.

Depending on the County and the community’s interests, the CEQA document may also conclude that the program could have some significant and unavoidable impacts, particularly where unknowns or delayed responses could have effects that are very hard to predict with

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limited available data. The Feasibility Assessment identifies that the program may have some considerable benefits that could serve as the basis for overriding considerations for approving the program.

The Feasibility Assessment noted that Section 7 of the Federal Endangered Species Act consultations may be required, but would be undertaken by the Bureau of Reclamation as part of their approval of the overall water transaction process. We assume that any National Environmental Policy Act (NEPA) review would not be in the purview of Mono County and would be handed by the Bureau of Reclamation as part of the overall, larger program. Any outcomes from the CEQA review can be used by the federal agencies; however, we have not included a federal process in our scope of work.

Subtask 4.1 Prepare NOP and Hold a Public Scoping Meeting

Prepare Notice of Preparation

Panorama will prepare a Notice of Preparation (NOP) for the EIR in accordance with Section 15082 of the CEQA Guidelines. The NOP will be submitted to the County for comments and will be revised accordingly. Panorama will produce, copy, and distribute the NOP to the State Clearinghouse, agencies, non-governmental organizations, and the public, as well as publish the required notices in the local newspaper(s). The NOP will announce the date, time, and location for the public scoping meeting (Task 3 below), specify the timeframe for scoping and the methods for providing comments on the scope of the EIR.

Prepare for and Attend Scoping Meetings

Panorama will coordinate and prepare materials for two public scoping meetings for the project, one in Antelope Valley and one in Bridgeport. We recommend a workshop style public scoping meeting to obtain scoping comments from community members and supply information on the proposed water transaction program and CEQA process.

Panorama will coordinate with the County to set dates and times for the meetings and reserve meeting rooms. Our team will prepare a PowerPoint presentation to facilitate the public meeting attendees' understanding of the CEQA process and the expected areas of study to be included in the EIR. The draft PowerPoint presentation will be submitted to Mono County for comments before finalization. Panorama and Mono County staff will jointly facilitate/lead the presentation and discussion at the public meetings. We have also included the preparation of a verbatim transcript of the public meetings (i.e., hire a court reporter to provide a transcript for the meeting). The cost is relatively small compared with the value of having all comments exactly captured as stated during the meeting.

A sign-in list will be provided at the meeting, so that the community can be regularly updated on the CEQA process. Panorama will also provide comment cards to allow meeting participants to provide written comments at the meeting.

Panorama recommends coordinating separate meetings with key stakeholder organizations and agencies during the scoping period and while Panorama team staff are in the region for the

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scoping meetings. Focused meetings with agency staff can help define specific technical issues that will need to be addressed in the EIR and approaches to addressing agency comments.

Prepare Scoping Comment Summary Checklist

Panorama will organize the comments received during the public scoping period by category/resource area to generate a checklist. We have a template for comment summary in an excel model. The checklist will be used during preparation of the EIR to ensure that all issues relevant to environmental impact analysis under CEQA raised by the public and agencies are clearly addressed.

Subtask 4.2 Prepare Administrative Draft EIR

Overview

The Panorama team will prepare the Administrative Draft EIR, including the technical analyses described in Task 2. The Administrative Draft will be submitted to the County for review and comment and will include all graphics and appendices. The format of the EIR will be determined in consultation with the County, but will conform to the requirements of CEQA and the CEQA Guidelines. The EIR will include the following chapters:

- **Introduction:** The Introduction will include a brief summary of the proposed project, the project history, the CEQA process and the purpose of the project, the results of the scoping process, and any permits required.
- **Project Description:** The Project or Program Description will include the location of the project on topographic and regional maps; a statement of objectives sought by the project; a general description of the General Plan policies and water transaction program; and a statement briefly describing the intended uses of the EIR;
- **Setting, Impact Analyses, and Mitigation:** This introduction to this chapter will include a summary statement of any environmental effects or impacts found via the IS to not be significant and, therefore, not discussed in detail in the EIR. The chapter will include the technical analyses for all key areas not excluded through the IS and described in detail in Task 2 of this scope of work.
- **Alternatives to the Project**
- **Other CEQA Considerations**
- **Environmental Consultation and References**
- **Appendices**

The technical analyses will be presented as described in Task 2. Panorama will use the checklist of public issues identified during scoping to ensure that each impact section addresses the environmental concerns raised during scoping.

Prepare Project Description

Panorama will prepare an EIR project description that includes a description of the General Plan amendment and associated water transaction program. The Project Description will describe the project location, project objectives, the water transaction program components, the

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proposed General Plan amendment policies, and relationship of General Plan amendment to other General Plan policies.

Incorporate Environmental Analysis from Task 2

Each environmental resource section of the EIR will be submitted to Mono County for one preliminary review prior to compilation of the Administrative Draft EIR. Comments received from Mono County in the preliminary review of each section will be addressed and the edits will be included as part of the Administrative Draft EIR. A copy of the “marked up” sections, showing the comments, responses, and edits in track changes, will be maintained for recordkeeping. The Administrative Draft will not include any comments or mark-up. The key issues and scope of each technical topic to be addressed are described above in Task 2. Several CEQA topics could be focused out of the EIR through the impact analysis contained in the Feasibility Assessment because the water transaction program would have no impact or less than significant impacts on those resources. CEQA topics that could be focused out of the EIR include: Forestry; Cultural Resources; Geology, Soils, and Seismicity; Hazardous Materials; Mineral Resources; Noise; Population and Housing; Public Services; Traffic and Transportation; and Utilities and Service Systems. CEQA topics that will be addressed in the EIR are presented in Task 2.

Prepare Alternatives Section of the EIR

An important aspect of EIR preparation is the identification and assessment of a reasonable range of alternatives that have the potential for avoiding or minimizing the environmental impacts of a project. The CEQA Guidelines require consideration of the No Project Alternative (Section 15126.6[e]) and selection of a range of reasonable alternatives (Section 15126.6[d]). The EIR must adequately assess these alternatives to allow for consideration by decision makers. The CEQA Guidelines (Section 15126.6[a]) state that:

An EIR shall describe a reasonable range of alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

The Feasibility Assessment included a range of five separate water transaction scenarios. Alternative policies could be formulated that allow for different water transaction or leasing options, or stipulate specific timing for these activities.

Prepare Cumulative Impacts and Other CEQA Considerations

Panorama will coordinate with local agencies including Mono County, U.S. Bureau of Land Management, the U.S. Forest Service and utilities to develop a cumulative project list. The cumulative impact analysis will include evaluation of the cumulative impacts of past, present, and probable future projects consistent with CEQA requirements.

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Other CEQA Considerations

Panorama will define the significant and unavoidable, significant irreversible environmental effects, and effects not found to be significant as required by the CEQA Guidelines. Panorama anticipates working closely with Mono County's legal counsel in determining and defining significant unavoidable effects of the project in the EIR, if any would potentially occur.

Subtask 4.3 Prepare Check Draft EIR

Panorama will prepare a Check Draft EIR that addresses all comments provided by the County on the Administrative Draft EIR. The Check Draft EIR will be provided in both track-changes and as a clean version. The track-change version will include all County comments and show how each comment was addressed with all edits made by Panorama. Panorama will organize and participate in a web-conference to discuss the Check Draft EIR and to discuss any outstanding issues with the EIR that need to be addressed in the public Draft EIR. Any final revisions will be provided to the County for review prior to publication of the Draft EIR.

Panorama will include an Executive Summary in the Check Draft EIR. The Executive Summary will include a description of the project, pertinent issues addressed in the EIR, a list of all significant environmental impacts, and a summary table containing all conclusions and all mitigation measures in the EIR.

Panorama will prepare a Draft Mitigation Monitoring and Reporting Plan (MMRP) for inclusion in the Check Draft EIR. The Draft MMRP will meet the requirements of Public Resources Code Section 21081.6(a). The MMRP is a tracking and implementation tool that will include tables to identify all mitigation measures, the implementation/monitoring methods for these measures, the monitoring entity, the implementation schedule, and any additional field notes to capture compliance. The MMRP will incorporate all mitigation measures in the Check Draft EIR and will include the HBMMP developed during the biological and hydrologic analysis.

Subtask 4.4 Prepare Draft EIR and Notices

Panorama will prepare the Draft EIR based on the comments provided by the County on the Check Draft EIR. Concurrent with preparation of the Draft EIR, Panorama will prepare a draft Notice of Completion to be submitted with the Draft EIR. Panorama will produce all copies of the Draft EIR and all public notices including the Notice of Completion and Notice of Availability (NOA). The NOA will include information on the methods and locations to access the Draft EIR in print and electronic format and the time, date, and location of the Draft EIR public review meeting. The Notice of Completion will be filed with the State Clearinghouse along with 15 copies of the Executive Summary and CDs. Panorama will mail the NOA to interested parties, agencies, elected representatives, and Tribes. Panorama will submit the NOA mailing list to the County for review.

Subtask 4.5 Public Review and Public Hearing on the Draft EIR

Panorama will coordinate with the County to set a date and location for the public meeting on the Draft EIR. Panorama will reserve the meeting room and coordinate with required technical

MONO COUNTY

experts for attendance at the meeting. Panorama recommends that the public meeting include an informal question and answer session prior to obtaining official public comments on the Draft EIR.

Panorama will prepare a PowerPoint presentation and posters for the public review meeting. The PowerPoint will provide information on the project, summarize the environmental resources affected by the project, the proposed mitigation, the CEQA process, and how to provide comments. The draft PowerPoint presentation will be submitted to the County for comments before finalization. Up to four posters will be presented showing key environmental resource maps or photos.

Panorama will participate in one meeting to receive comments on the Draft EIR during the presumed 45-day Draft EIR review and comment period. Panorama and County staff will jointly facilitate/lead the presentation and discussion at the meeting. Panorama will arrange for the preparation of a verbatim transcript of the meeting (i.e., hire a court reporter to provide a transcript for the meeting). A sign-in list, including a method for community members to request updates, will be provided at the meeting. The contact information will be used to update the project's mailing list. Panorama will also provide comment cards to allow meeting participants to provide written comments at the meeting.

Subtask 4.6 Prepare Response to Comments and Final EIR

Panorama will catalog and categorize all comments received on the Draft EIR through the end of the presumed 45-day review and comment period. For scheduling and budgeting purposes, Panorama assumes 50 distinct and unique comments will be received on the Draft EIR. The comments will be cataloged by sender and by topic. Topics will be organized such that "Master Responses" will be prepared. We will work with County staff to define the Master Response categories and to discuss the approach to comment responses. We assume that Mono County will review the Responses to Comments prior to making any changes to the EIR. We assume two rounds of review on the Responses to Comments prior to making revisions to the EIR.

Once the review of the Response to Comments is complete, we will make edits to the EIR and will prepare an Administrative Final EIR for County review. The Administrative Final EIR will show revisions in strikeout and underline to reflect the changes from the Draft EIR. One round of review of the Administrative Final EIR is anticipated, after which, the Final EIR will be prepared. We assume up to two phone conferences or web-meetings will be held during the preparation of the Response to Comments and Final EIR.

Panorama will prepare a Final MMRP for inclusion in the Final EIR. The MMRP will incorporate all revisions to the mitigation measures included in the Final EIR and address comments received on the Draft MMRP. Panorama will print the MMRP as a stand-alone document.

TASK 5 PRESENT GENERAL PLAN REVISIONS AND FINAL EIR AT THE PLANNING COMMISSION

Subtask 5.1 Prepare Draft Findings

Panorama will prepare the Draft Findings of Fact and Statement of Overriding Considerations if there are any significant and unavoidable impacts that would result from the project. For each significant environmental effect identified in the EIR, Panorama will prepare draft finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations (i.e., mitigation measures) have been incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, make the mitigation measures or project alternatives identified in the Final EIR infeasible (CEQA Guidelines, Section 15091.) Panorama will revise the Findings of Fact and Statement of Overriding considerations to reflect Mono County staff and legal counsel comments on the Draft Findings of Fact and Statement of Overriding Considerations.

TASK 5 DELIVERABLES:

1. Draft Findings of Fact and Statement of Overriding Considerations (if needed)
2. Notice of Determination

Subtask 5.2 Prepare Presentation for and Attend Board Hearing on Final EIR and General Plan Revisions

Panorama will attend the hearing on the Final EIR held at a meeting of the Mono County Planning Commission. Panorama will prepare a draft PowerPoint presentation that includes a brief project overview, areas of public controversy, and conclusions of the Final EIR. Panorama will revise the PowerPoint presentation to address comments from Mono County. Panorama Project Director and Project Manager will be available at the public hearing to answer questions in support of Mono County staff. Panorama will also obtain minutes on the Final EIR certification hearing.

Subtask 5.3 Prepare Notice of Determination

Panorama will prepare the draft Notice of Determination for Mono County to file with the State Clearinghouse.

ATTACHMENT B

**AGREEMENT BETWEEN COUNTY OF MONO
AND PANORAMA ENVIRONMENTAL, INC.
FOR THE PROVISION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT
ANALYSIS OF WATER LEASES/TRANSFERS IN THE WALKER RIVER BASIN,
MONO COUNTY, CALIFORNIA SERVICES**

TERM:

FROM: NOVEMBER 14, 2017 TO: DECEMBER 31, 2019

SCHEDULE OF FEES:

Click here to enter text.

See Attachment B1, incorporated herein by this reference (optional).

BUDGET AND SCHEDULE

BUDGET

Proposed Budget

The not-to-exceed budget for the proposed project is \$365,991 dollars. Costs by task are provided in the table, below. A detailed breakdown of hours by subtask and rate schedules for Panorama, AMP Insights, and Stillwater Sciences are included in Appendix B.

Table 4 Estimated Not-to-Exceed Costs

Task	Labor Costs (including Subs)	Direct Costs	Total Costs
Task 1: Team Kick-Off, Coordination, and Management	\$8,370	\$968	\$9,338
Task 2: Technical Studies and Approach to Technical Analyses	\$177,410	\$0	\$177,410
Task 3: Development of General Plan Policies and Alternatives	\$58,140	\$1,760	\$59,900
Task 4: Preparation of the EIR	\$107,210	\$3,520	\$110,730
Task 5: Present General Plan Policies and Final EIR at the Planning Commission	\$7,615	\$968	\$8,583
TOTAL	\$358,745	\$7,216	\$365,961

Assumptions

Assumptions are included throughout the scope of work. The extent of modeling, collection of background information, outreach efforts, and number or extent of revisions are bound by the hours presented in the budget.

SCHEDULE

Panorama has prepared a schedule that reflects a contract start date of October 15. The biological resource survey and baseline visual assessment are scheduled to occur in Spring of

MONO COUNTY

2018 (estimated to start April 15) because the project will be starting the in fall of 2018 and outside the peak season for vegetation growth. Panorama will adjust the schedule as needed to reflect weather and spring growth. If the 2017/2018 water year is drier than usual, or the spring is warmer than usual, surveys can be conducted ahead of schedule; however, if there is a very wet winter and slow spring snow melt, surveys may need to be delayed from the schedule provided. This schedule includes 10-day review periods for Mono County on larger deliverables. For smaller items, the review period has been reduced to 5 days to expedite the completion of the project.

Panorama Environmental, Inc.
Proposed Budget Detail for the Proposal to California Environmental Quality Act Analysis of Water Leases/Transfers
in the Walker River Basin

		Element 1: Kick-off Meeting and Coordination and Management			Element 2: Technical Studies and Analyses		Element 3: General Plan Policies and Alternatives		Element 4: Prepare EIR		Element 5: Final Hearing and Findings		SUBTOTALS (ACROSS)	
		\$/HR	HOURS	DOLLARS	HOURS	DOLLARS	HOURS	DOLLARS	HOURS	DOLLARS	HOURS	DOLLARS	HOURS	DOLLARS
LABOR	Principal (Tania & Laurie)	\$195.00	40.0	\$7,800.00	72.0	\$14,040.00	80.0	\$15,600.00	230.0	\$44,850.00	25.0	\$4,875.00	447.0	\$87,165.00
	Director (Susanne)	\$185.00	2.0	\$370.00	58.0	\$10,730.00	4.0	\$740.00	48.0	\$8,880.00	0.0		134.0	\$24,790.00
	Env Planner II (Caitlin)	\$140.00	0.0		88.0	\$12,320.00	0.0		248.0	\$34,720.00	18.0	\$2,520.00	354.0	\$49,560.00
	Env Planner I (Kara)	\$120.00	0.0		0.0		60.0	\$7,200.00	12.0	\$1,440.00	0.0		72.0	\$8,640.00
	GIS Specialist (Corey)	\$125.00	0.0		34.0	\$4,250.00	8.0	\$1,000.00	56.0	\$7,000.00	0.0		98.0	\$12,250.00
	Graphic Design (Dave)	\$110.00	0.0		0.0		16.0	\$1,760.00	52.0	\$5,720.00	2.0	\$220.00	70.0	\$7,700.00
	Env Analyst (Sean)	\$100.00	2.0	\$200.00	0.0		0.0		20.0	\$2,000.00	0.0		22.0	\$2,200.00
	Fire Specialists (Carol)	\$150.00	0.0		40.0	\$6,000.00	0.0		12.0	\$1,800.00	0.0		52.0	\$7,800.00
	Outreach Specialist (Nick)	\$205.00	0.0		0.0		48.0	\$9,840.00	0.0		0.0		48.0	\$9,840.00
	Visual Specialist (Patrick)	\$200.00	0.0		80.0	\$16,000.00	0.0		4.0	\$800.00	0.0		84.0	\$16,800.00
	Hydrologist (Alan)	\$205.00			20.0	\$4,100.00								
	Labor Total			44	\$8,370.00	394	\$67,440.00	216	\$36,140.00	682	\$107,210.00	45	\$7,615.00	1381.0
EXPENSES	COST MARK-UP =	10.00%	DOLLARS	W/MARKUP	DOLLARS	W/MARKUP	DOLLARS	W/MARKUP	DOLLARS	W/MARKUP	DOLLARS	W/MARKUP		
	TRAVEL TRAVEL / VEHICLE RENTALS		\$120.00	\$132.00	\$0.00		\$120.00	\$132.00	\$240.00	\$264.00	\$120.00	\$132.00		\$660.00
	TRAVEL EXPENSES / AIR		\$400.00	\$440.00	\$0.00		\$800.00	\$880.00	\$1,600.00	\$1,760.00	\$400.00	\$440.00		\$3,520.00
	LODGING / OTHER		\$160.00	\$176.00	\$0.00		\$280.00	\$308.00	\$560.00	\$616.00	\$160.00	\$176.00		\$1,276.00
	TRAVEL EXPENSES /MEALS		\$200.00	\$220.00	\$0.00		\$400.00	\$440.00	\$800.00	\$880.00	\$200.00	\$220.00		\$1,760.00
	Travel Total			\$968.00		\$0.00		\$1,760.00		\$3,520.00		\$968.00		\$7,216.00
SUBCONSULTANTS	OTHER TECHNICAL CONSULTANT		\$0.00		\$100,000.00	\$110,000.00	\$20,000.00	\$22,000.00	\$0.00		\$0.00			\$132,000.00
	Subcontract Total			\$0.00		\$110,000.00		\$22,000.00		\$0.00		\$0.00		\$132,000.00
TOTAL ALL EXPENSES				\$968		\$110,000		\$23,760		\$3,520		\$968		\$139,216
GRAND TOTAL LABOR & EXPENSES				\$9,338		\$177,440		\$59,900		\$110,730		\$8,583		\$ 365,991

PANORAMA 2017 RATE SCHEDULE

HOURLY PERSONNEL CHARGES

Assigned Staff	Position	Rate
Dave Jorns	Document Production Specialist/Admin	\$110
Sean Pagnon	Environmental Analyst I	\$100
Sheila Hoyer	Environmental Analyst II/Technical Editor	\$115
Corey Fong	Cartographer/GIS Specialist II	\$125
Kara Dewhurst	Environmental Scientist/Planner I	\$120
Caitlin Gilleran	Environmental Scientist/Planner II	\$140
N/A	Environmental Scientist/Planner III	\$165
N/A	Technical Specialist (various)	\$135 - \$205
Patrick Miller	Visual Expert	\$200
Carol Rice	Fire Expert	\$150
Alan Welch	Hydrologist	\$205
Susanne Heim	Senior Project Manager	\$185

Tania Treis/Laurie Hietter	Project Director/Principal	\$195
Nicholas Dewar	Public Facilitator	\$205

OTHER CHARGES

Mileage is charged at the IRS Standard Rates for the current year. Outside services, equipment, and facilities not furnished directly by Panorama will be billed at cost plus 10% including, but not limited to, the following:

- Meals and Lodging
- Printing and photographic reproductions
- Rental of equipment and vehicles
- Shipments
- Special fees, permits, insurance, etc.
- Subcontractors
- Supplies
- Airfare



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Clerk of the Board

TIME REQUIRED

SUBJECT SB 190 Letter

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Letter to the Board from multiple groups including the East Bay Community Law Center regarding the implementation of S.B. 190.

RECOMMENDED ACTION:

FISCAL IMPACT:

CONTACT NAME: Scheereen Dedman

PHONE/EMAIL: x5538 / sdedman@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
SB 190 Letter

History

Time	Who	Approval
11/14/2017 1:22 PM	County Administrative Office	Yes
11/13/2017 5:19 PM	County Counsel	Yes
11/9/2017 11:17 AM	Finance	Yes

Dear Mono County Board of Supervisors Chairperson Corless:

On October 11, 2017, Governor Jerry Brown signed into law Senate Bill 190, which repeals county authority to charge administrative fees to families with youth in the juvenile system.

Effective January 1, 2018, counties are no longer authorized to charge families for their youth's detention, lawyer, supervision, electronic monitoring, or drug testing.

Attached please find an implementation letter describing your county's legal obligations under SB 190, as well as further steps that we urge your county to take to reduce the harm caused by these fees and to avoid exposure to liability for unlawfully assessed fees.

We encourage you to review this letter carefully and to ensure that all relevant actors in your county are informed of the new law's requirements and purpose.

We have also attached a checklist of concrete actions your county should take to implement SB 190, and a one-page flyer to distribute and post in relevant locations (we will forward a Spanish version of the flyer when it becomes available).

Please contact us at SB190@clinical.law.berkeley.edu if you have any questions or suggestions about implementing the letter and purpose of this important new law.

Sincerely,

East Bay Community Law Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Public Counsel
UC Berkeley School of Law Policy Advocacy Clinic
Western Center on Law & Poverty
Youth Justice Coalition



November 2, 2017

The Honorable Stacy Corless
Mono County Board of Supervisors
PO Box 715
Bridgeport, CA 93517

RE: Implementation of Senate Bill 190 (Ending Juvenile Fees)

Dear Board Chairperson Corless:

We write regarding the implementation of Senate Bill 190, authored by Senators Holly J. Mitchell and Ricardo Lara and signed into law by Governor Jerry Brown on October 11, 2017. Effective January 1, 2018, SB 190 repeals county authority to charge specified fees to parents, guardians, and youth for a youth's involvement in the juvenile delinquency system. We encourage you and your colleagues to implement SB 190 quickly and robustly.

SB 190 was enacted to end regressive and racially discriminatory juvenile fee practices, which undermine youth rehabilitation and public safety. For these reasons—and to reduce the liability facing counties that continue such practices—we are urging counties to:

- (1) Stop all juvenile fees assessments immediately,
- (2) End all juvenile fee collection activity,
- (3) Discharge all previously assessed juvenile fees, and
- (4) Refund families who paid unlawfully assessed juvenile fees.

To assist counties in taking the above actions, we have enclosed an SB 190 Implementation Checklist, which sets forth concrete steps to implement the letter and spirit of the new law. The Checklist is informed by the actions in counties that have recently ended assessment and collection of the fees. We have also enclosed an SB 190 Flyer that can be posted in relevant county facilities.

(1) Stop All Juvenile Fee Assessments Immediately

SB 190 repeals county authority to assess all juvenile fees in the delinquency system, including fees related to:

- (a) detention (Cal. Welf. & Inst. Code § 903),
- (b) legal representation (Cal. Welf. & Inst. Code §§ 903.1, 903.15),
- (c) electronic monitoring (Cal. Welf. & Inst. Code § 903.2),
- (d) probation or home supervision (Cal. Welf. & Inst. Code § 903.2), and
- (e) drug testing (Cal. Welf. & Inst. Code § 729.9).

Although the prohibition does not go into effect until January 1, 2018, the legal basis and public policy rationale for ending the assessment of these fees are as strong today as they will be in January.

Alameda, Contra Costa, Los Angeles, Sacramento, Santa Clara, and Sonoma Counties

stopped assessing juvenile fees before the enactment of SB 190. Solano County stopped assessing fees after SB 190 was signed. San Francisco County has never charged such fees. As noted in more detail below, juvenile fees frequently are being imposed unlawfully, which exposes counties to legal liability.

To implement SB 190's public policy purpose and to comply with state and federal law, all counties should stop all juvenile fee assessments immediately.

(2) End All Juvenile Fee Collection Activity

SB 190 requires counties to end the assessment of all juvenile fees, but it does not prohibit the collection of previously assessed juvenile fees, some of which date back to the 1970s.

UC Berkeley researchers found that juvenile fee assessment and collection practices harm some of California's most vulnerable families, perpetuating cycles of poverty, exacerbating racial injustice, and undermining youth rehabilitation and family reunification.⁵¹ The researchers also found that counties often charge and collect fees in violation of state and federal law. The fees are costly to collect, with little or no net revenue, since most families cannot afford to pay them. Finally, the fees correlate with higher recidivism, which undermines public safety.

All California counties that have stopped assessing juvenile fees since 2016 have also ended fee collection, without reporting any negative consequences (Alameda, Contra Costa, Sacramento, Santa Clara, Solano, and Sonoma). Most recently, on October 24, 2017, the Solano County Board of Supervisors adopted a resolution that authorized the discharge of all juvenile fee accounts receivable balances in the amount of approximately \$3.9 million.⁵²

To reduce their harmful, unlawful, and costly impacts, counties should end the collection of all juvenile fees immediately.

(3) Discharge All Previously Assessed Juvenile Fees

Previously assessed juvenile fees are memorialized in fee agreements and stipulations and are entered against parents and guardians in the form of civil judgments. Such judgments can impair a family's ability to secure housing, jobs, and credit. Ending fee assessment and collection alone, therefore, will not relieve families of the collateral consequences of juvenile fees.

In many cases, counties that ended fee assessments and collections have discharged all outstanding juvenile fees. For example, the October 2017 Solano County Board of Supervisors resolution noted above authorized the satisfaction and release of liens and stipulated judgments for juvenile fees in the amount of approximately \$1.7 million.

To foster rehabilitation, enhance public safety, and ensure compliance with state and federal law, counties should discharge all juvenile fee judgments against families, including agreements and stipulations.

(4) Refund Families Who Paid Unlawfully Assessed Juvenile Fees

SB 190 does not address the harm to families who made payments on juvenile fees that were

⁵¹ UC Berkeley Public Law Research Paper, *Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California* (Mar. 2017), <https://ssrn.com/abstract=2937534>.

⁵² Solano County, Cal. Res. No. 2017-___ (Oct. 24, 2017), <http://solano.legistar.com/gateway.aspx?M=F&ID=0970161b-b17e-48aa-9c84-91f522039134.docx>.

unlawfully assessed or collected. As described in the UC Berkeley study, such unlawful practices in your county may have included collecting payment from families:

- a. for fees related to petitions that are not sustained (i.e., where youth have not been found to violate any law) (violates due process and state law),
- b. that include meals provided to youth for which the county receives reimbursement from national nutrition programs (violates federal law),
- c. without conducting a proper ability-to-pay evaluation (violates due process and state law),
- d. for services that benefit society as a whole, such as probation supervision, home supervision, or electronic monitoring (violates equal protection),
- e. for a juvenile investigation report (violates state law), and
- f. for detention fees that exceed \$31.69 per day (violates state law).

Contra Costa County has already taken the lead in refunding families for fees that were unlawfully assessed and collected. The county has identified hundreds of cases during a six-year period prior to its fee repeal in which families made payments for youth whose petitions were not sustained, and is contacting families to make refunds.

To remedy unlawful practices, counties should refund families who made payments on juvenile fees that should not have been charged.

Thank you for everything you are doing to help young people succeed. Please do not hesitate to contact us if we can assist you in implementing SB 190, which will foster youth rehabilitation and public safety.

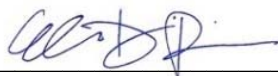
Sincerely,



Jessica Bartholow
Policy Advocate
Western Center on Law & Poverty
(916) 282-5119
jbartholow@wclp.org



Kate Weisburd
Director, Youth Defender Clinic
East Bay Community Law Center
(510) 548-4040
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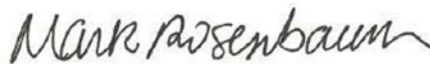
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Stephanie Campos-Bui
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scamposbui@clinical.law.berkeley.edu



Mark Rosenbaum
Director, Opportunity Under Law
Public Counsel
(213) 385-2977
mrosenbaum@publiccounsel.org

encl. SB 190 Implementation Checklist
SB 190 Flyer

cc: County Administrator
County Counsel
Chief Probation Officer
Collections/Revenue Officer
Public Defender
District Attorney
Presiding Juvenile Court Judge (by mail)
Court Executive Officer

The Honorable Holly J. Mitchell, California State Senate (SB 190 Author)
The Honorable Ricardo Lara, California State Senate (SB 190 Author)
The Honorable Governor Jerry Brown
The Honorable Senate President and Lieutenant Governor Gavin Newsom
The Honorable Senate President pro Tempore Kevin de León
The Honorable Assembly Speaker Anthony Rendon
The Honorable Assembly Speaker pro Tempore Kevin Mullin
The Honorable Senate Majority Floor Leader William W. Monning
The Honorable Senate Minority Floor Leader Jean Fuller
The Honorable Assembly Majority Floor Leader Ian Calderon
The Honorable Assembly Minority Floor Leader Chad Mayes



SB 190 (Ending Juvenile Fees) County Implementation Checklist

This Checklist sets forth best practices for counties to implement Senate Bill 190, which repeals all juvenile fees in the delinquency system effective January 1, 2018. For purposes of SB 190, “juvenile fees” refers to fees charged to parents, guardians, and youth for detention, legal representation, electronic monitoring, probation or home supervision, and drug testing while the youth is under the jurisdiction of a juvenile court.

Although SB 190 does not address previously assessed juvenile fees, the Legislature and the Governor made clear their intention to end harmful, unlawful, and costly juvenile fee practices. To further the purpose of SB 190 and to comply with other state and federal laws, counties should take the following steps:

(1) Stop All Juvenile Fee Assessments Immediately (must end by December 31, 2017)

To stop juvenile fee assessments against families, counties should:

- Designate an SB 190 implementation point person
- Inform all relevant county employees that no juvenile fees may be assessed, including, but not limited to:
 - Board of Supervisors
 - County Administrator
 - County Counsel
 - Chief Probation Officer
 - Collections/Revenue Officer
 - Public Defender
 - District Attorney
 - Presiding Juvenile Court Judge
 - Court Executive Officer
- Update applicable online payment platforms and relevant county webpages to inform visitors that juvenile fees cannot be assessed on or after January 1, 2018 (or earlier date if applicable in your county)

(2) End All Juvenile Fee Collection Activity

To end juvenile fee collection activity against families, counties should:

- Write off all accounts receivable balances for juvenile fees as satisfied
- Cease all solicitation of payment for previously assessed juvenile fees, including from third party debt collectors.

- Inform all families by mail that unpaid previously assessed juvenile fees are no longer owed and that no payment will be collected or accepted
- Update applicable online payment platforms and relevant county webpages to inform visitors that no payments on juvenile fees will be collected or accepted
- Recall all previously assessed juvenile fees referred to the Franchise Tax Board's Court-Ordered Debt Collections and/or the Interagency Intercept Collection Program

(3) Discharge All Previously Assessed Juvenile Fees

To discharge previously assessed juvenile fees, counties should:

- Satisfy and release all juvenile fee agreements and stipulations entered into between the county financial evaluation officer and families, and notify the families in writing
- File an acknowledgement of satisfaction with the court of all juvenile fee judgments and serve notice to families

(4) Refund Families Who Paid Unlawfully Assessed Juvenile Fees

To refund families who paid unlawful juvenile fees, counties should:

- Undertake a comprehensive review of juvenile fees that have been assessed and collected to determine if any were assessed in violation of a state or federal statute, or the California or U.S. Constitution. Such unlawful practices may include, but are not limited to, collecting or accepting payment from families:
 - with a youth whose petition is not sustained (violates due process and state law)
 - for detention fees that include meals provided to youth for which the county receives national nutrition program funding (violates federal law)
 - without conducting a proper ability-to-pay evaluation (violates due process and state law)
 - for items that benefit society as a whole such as probation supervision, home supervision, or electronic monitoring (violates equal protection)
 - for a juvenile investigation report (violates state law)
 - for detention fees that exceed \$31.69 per day (violates state law)
- Refund families for any payments they have made on juvenile fees that were unlawfully assessed, including any additional costs associated with collection, with interest.

As local practices may vary, counties should take whatever actions are necessary to:

- (1) Stop all juvenile fees assessments immediately,
- (2) End all juvenile fee collection activity,
- (3) Discharge all previously assessed juvenile fees, and
- (4) Refund families who paid unlawfully assessed juvenile fees.

NO MORE JUVENILE FEES

Under a new California law (SB 190), counties cannot charge fees to parents and guardians with youth in the juvenile delinquency system beginning January 1, 2018.

What cannot be charged?

Under the new law, families with youth in juvenile court **cannot** be charged:

- **Detention fees**
Food, clothing, personal supplies, or medical care in juvenile hall or any other detention facility
- **Lawyer fees**
Public defender or court-appointed lawyer
- **Electronic monitoring fees**
Ankle monitors or any other GPS tracking device
- **Probation and home supervision fees**
For the period of probation monitoring
- **Drug testing fees**
Court-ordered drug testing and results

If you are charged any of these fees starting January 1, 2018, or have questions about a bill you got from the county after your child was arrested, contact the county department that sent the bill and your child's court-appointed lawyer immediately.

What can still be charged?

- **Restitution**
Payment to crime victims
- **Restitution fines**
Fixed amount to a state restitution fund



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Clerk of the Board

TIME REQUIRED

SUBJECT Wildlife Conservation Board Letter

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Letter from the California Wildlife Conservation Board on behalf of the California Department of Fish and Wildlife (DFW) advising of their consideration of acceptance, on DFW's behalf, of a conservation easement on 15+ acres of land within the Town of Mammoth Lakes and 10+ acres of land near Swall Meadows (Wheeler Ridge).

RECOMMENDED ACTION:

FISCAL IMPACT:

CONTACT NAME: Scheereen Dedman

PHONE/EMAIL: x5538 / sdedman@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download

[WCB Letter](#)

History

Time	Who	Approval
11/16/2017 4:50 AM	County Administrative Office	Yes
11/15/2017 3:39 PM	County Counsel	Yes
11/15/2017 1:55 PM	Finance	Yes

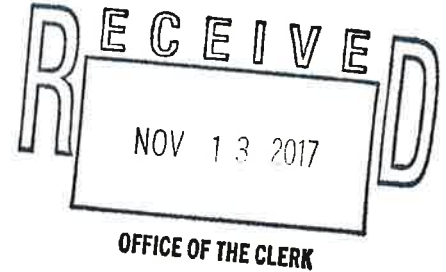


EDMUND G. BROWN JR, Governor
NATURAL RESOURCES AGENCY
DEPARTMENT OF FISH AND WILDLIFE
WILDLIFE CONSERVATION BOARD
Mailing Address: 1416 9th Street, Rm. 1266
Sacramento, California 95814
www.wcb.ca.gov
(916) 445-8448
Fax (916) 323-0280

Mono County Board of Supervisors
P.O. Box 715
Bridgeport, California 93517

Snowcreek VIII Mitigation
Mono County
Project ID 2017096

NOV 03 2017



Dear Board Members:

The California Department of Fish and Wildlife (CDFW), through the Wildlife Conservation Board (WCB), is involved in a land acquisition program focused on the long-range protection and enhancement of habitat for fish and wildlife. The CDFW identifies sites considered for acquisition in response to public interest, legislative mandate and departmental goals.

I am writing to advise you that the WCB will consider the acceptance of a 15± acre conservation easement of wildlife habitat located in Mono County and identified as Assessor's Parcel No. 040-160-002. The proposal is scheduled to be presented at the November 30, 2017, board meeting. You will find enclosed a copy of the preliminary meeting agenda for your review. A more complete description of each proposal will be contained in the final meeting agenda, which will be available at www.wcb.ca.gov beginning on November 16, 2017.

If you have any questions about this proposal or need additional information, please feel free to contact me at (916) 445-0137.

Sincerely,

John P. Donnelly
Executive Director

Enclosure

CC: The Honorable Tom Berryhill
The Honorable Franklin Bigelow
Leslie MacNair, Regional Manager
CDFW, Inland Deserts Region (6)



EDMUND G. BROWN Jr., Governor
NATURAL RESOURCES AGENCY
DEPARTMENT OF FISH AND WILDLIFE
WILDLIFE CONSERVATION BOARD
Mailing Address: 1416 9th Street, Room 1266
Sacramento, California 95814
www.wcb.ca.gov
(916) 445-8448
Fax (916) 323-0280

Notice of Meeting
WILDLIFE CONSERVATION BOARD
November 30, 2017
10:00 a.m.
Natural Resources Building, First Floor Auditorium
1416 9th Street
Sacramento, California 95814

Preliminary Agenda Items

Item Number

1. Roll Call
2. Funding Status — Informational
3. Proposed Consent Calendar (Items 4 – 12)
- *4. Approval of Minutes
- *5. Recovery of Funds

*Proposed Consent Calendar

***6. Easement Transfers
Informational**

Report on easement transfers made over the California Department of Fish and Wildlife controlled land pursuant to authority granted by the Wildlife Conservation Board on February 24, 1998.

***7. City of Arcata, Lima Conservation Easement
Humboldt County
\$0**

To consider the acceptance of a conservation easement over 20+ acres by CAL FIRE under the California Forest Legacy Act of 2007, for the purposes of protecting fish and wildlife habitat, located in the City of Arcata, Humboldt County.

***8. Snowcreek VIII Mitigation
Mono County
\$0**

To consider the acceptance of a conservation easement (Easement) over 15± acres by the California Department of Fish and Wildlife from the Town of Mammoth Lakes. The Easement satisfies a mitigation requirement of a grading permit issued to the Snowcreek Development Company and is located in the Town of Mammoth Lakes in Mono County.

***9. Wheeler Ridge, Expansion 6
Mono County
\$305,000**

To consider the acquisition in fee of 10± acres of land by the California Department of Fish and Wildlife for the protection of deer and mountain lion habitat, to maintain a migration corridor for the Round Valley mule deer herd, and to provide future wildlife oriented public use opportunities, located near the community of Swall Meadows, near Mammoth Lakes in Mono County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition of habitat, including native oak woodlands, to protect deer and mountain lions. [Habitat Conservation Fund (Proposition 117), Fish and Game Code Section 2786(a)]

***10. Rancho Jamul Ecological Reserve, Expansion 3
San Diego County
\$25,000**

To consider the acquisition in fee of 40± acres of land by the California Department of Fish and Wildlife (CDFW) for the protection of threatened and endangered species, to preserve biological communities supporting sensitive species, to enhance wildlife linkages, and provide future wildlife oriented public use opportunities, as an expansion of CDFW's Rancho Jamul Ecological Reserve located near the community of Jamul in San Diego County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition of habitat to protect rare, endangered threatened or fully protected species. [Habitat Conservation Fund (Proposition 117), Fish and Game Code Section 2786(b/c)]

***11 Rancho Jamul Ecological Reserve, Expansion 4
San Diego County
\$0**

To consider the acceptance of 3± acres of land by the California Department of Fish and Wildlife (CDFW) as an expansion to CDFW's Rancho Jamul Ecological Reserve to satisfy a mitigation requirement due to the State Route 94 highway safety improvement and widening project, located near the community of Jamul in San Diego County.

***12. County of San Diego Multiple Species Conservation Plan 2015 (Brown)
San Diego County
\$83,850**

To consider the acceptance of a U.S. Fish and Wildlife Service (USFWS) Habitat Conservation Plan Land Acquisition grant and the approval to subgrant these federal funds to the Endangered Habitats Conservancy (EHC), as well as to consider a Wildlife Conservation Board (WCB) grant to EHC, to acquire fee title to 9± acres of land located near the City of Santee in San Diego County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition and protection of habitat that implements or assists in the establishment of Natural Community Conservation Plans. [Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Proposition 84), Public Resources Code Section 75055(c)]

**13. Pintail Ranch Habitat Enhancement Project
Butte County
\$310,000**

To consider the allocation for a grant to California Waterfowl Association for a cooperative project with the North American Wetlands Conservation Act to develop water conveyance infrastructure and to restore wetlands and upland habitats on 507 acres of privately owned property, located 7.5 miles south of the city of Oroville in Butte County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition, enhancement or restoration of wetlands in the Central Valley. [Habitat Conservation Fund (Proposition 117), Fish and Game Code Section 2786(d), Inland Wetlands Conservation Program]

**14. Hammill Meadows Restoration Project
Tuolumne County
\$385,000**

To consider the allocation for a grant to the United States Forest Service for a cooperative project with the California Department of Water Resources and the National Fish and Wildlife Foundation to restore five meadows, stabilize headcuts, and fill sections of incised stream channels restoring channel form, floodplain connectivity, streambank stability, and meadow vegetation, located on Stanislaus National Forest lands 7 miles northeast of Pinecrest in Tuolumne County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for forest conservation and protection projects in order to promote the ecological integrity and economic stability of California's diverse native forests through forest conservation, preservation and restoration of productive managed forest lands, forest reserve areas, redwood forests and other forest types, including the conservation of water resources and natural habitats for native fish, wildlife and plants found on these lands. [Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Proposition 84), Public Resources Code Section 75055(a)]

15. San Joaquin River Parkway (County of Madera)

Madera County

\$340,000

To consider the acquisition in fee of 12± acres of land by the California Department of Fish and Wildlife (CDFW) and a Transfer of Jurisdiction of the land by CDFW to the San Joaquin River Conservancy (SJRC) for the protection of riparian habitat and provide future wildlife oriented public use opportunities, within the San Joaquin River Parkway, located near the City of Fresno in Madera County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition of habitat for river parkway projects identified by SJRC. [Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2007 (Proposition 84), Public Resources Code Section 75050(f)]

16. San Joaquin River Parkway, Spano River Ranch Habitat Enhancement

Project Augmentation

Fresno County

\$275,000

To consider the allocation for an augmentation to an existing grant to the San Joaquin River Parkway and Conservation Trust (Trust) for a cooperative project with the San Joaquin River Conservancy (SJRC) to improve and restore upland, riparian, and wetland habitat on 51± acres of the SJRC Spano River Ranch property, located approximately 1 mile downstream of the State Route 41 bridge within the Fresno City limits and the County of Fresno. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for river parkway projects identified by the San Joaquin River Conservancy. [Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Proposition 84, Public Resources Code Section 75050(f)).

17. Elkhorn Slough Tidal Marsh Restoration, Augmentation

Monterey County

\$400,000

To consider the allocation for an augmentation to an existing grant to the Elkhorn Slough Foundation for a cooperative project with California Department of Fish and Wildlife (CDFW), California State Coastal Conservancy, California Department of Water Resources, US Fish and Wildlife Service, and Santa Cruz County Public Works, to restore 46 acres of tidal marsh and five acres of perennial grasses, on CDFW's Elkhorn Slough National Marine Estuarine Research Reserve, located two miles east of Moss Landing in Monterey County. The purposes of this project are consistent with the authorized uses of the proposed funding sources, which allows for the acquisition, development, rehabilitation, restoration and protection of habitat to promote the recovery of threatened and endangered species, to provide corridors linking separate habitat areas to prevent habitat fragmentation, and to protect significant natural landscapes and ecosystems and other significant habitat areas [California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund (Proposition 40), Public Resources Code Section 5096.650(a)], and allows for the development, rehabilitation, restoration, acquisition and protection of habitat that accomplishes one or more of the following objectives: promotes recovery of threatened and endangered species, protects habitat corridors, protects significant natural landscapes and ecosystems, or implements the recommendations of the California Comprehensive Wildlife Strategy. [Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Proposition 84), Public Resources Code Section 75055(b)]

**18. Trabuco Creek Fish Passage Design
Orange County
\$523,000**

To consider the allocation for a grant to California Trout for a cooperative project with California Department of Fish and Wildlife to complete environmental permitting and to construct a final physical model of a proposed fish passage structure to determine the physical parameters necessary to restore steelhead trout in Trabuco Creek, located in San Juan Capistrano in Orange County. The purposes of this project are consistent with the authorized uses of the proposed funding source, which allows for the acquisition, restoration or enhancement of riparian habitat and aquatic habitat for salmonids and trout. [Habitat Conservation Fund (Proposition 117), Fish and Game Code Section 2786(e/f)]

**19. Wildlife Conservation Board Strategic Plan
Informational/Action**

Staff will present next steps in the implementation of the WCB Strategic Plan by describing the status of planning efforts underway in cooperation with the California Department of Fish and Wildlife, and will present the next steps in the development of a monitoring plan for evaluating the effectiveness of the Board's programs.

20 2018 Board Meeting Dates

Board will be asked to approve WCB meeting dates for 2018

Quarterly Board Meetings

Feb 22, 2018

May 24, 2018

Aug 30, 2018

Nov 15, 2018

Streamflow Enhancement Board Meeting

March 22, 2018

All meetings will begin at 9:00am in the Natural Resources Building, First Floor Auditorium.
1416 9th Street, Sacramento, California 95814

PERSONS WITH DISABILITIES

Persons with disabilities needing reasonable accommodation to participate in public meetings or other CDFW activities are invited to contact the Department's EEO Officer at (916) 653-9089 or EEO@wildlife.ca.gov. Accommodation requests for facility and/or meeting accessibility should be received by November 16, 2017. Requests for American Sign Language Interpreters should be submitted at least two weeks prior to the event, and requests for Real-Time Captioners at least four weeks prior to the event. These timeframes are to help ensure that the requested accommodation is met. If a request for an accommodation has been submitted but is no longer needed, please contact the EEO Officer immediately.



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Finance

TIME REQUIRED	PUBLIC HEARING 10:00 A.M. - 30 minutes (15 minute presentation; 15 minute discussion)	PERSONS APPEARING BEFORE THE BOARD	Janet Dutcher
SUBJECT	PUBLIC HEARING: Mono County Housing Program Guidelines		

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Public hearing regarding Mono County Housing program guidelines.

RECOMMENDED ACTION:

Adopt Resolution R17-____, Approving the Mono County First Time Homebuyer Guidelines, Owner Investor Rehabilitation Guidelines, and Occupant Rehabilitation Guidelines. Provide any desired direction to staff.

FISCAL IMPACT:

None at this time. Potential increase in Housing program funding from Community Development Block Grant program. Also, likely increases competitiveness of Mono County's grant application.

CONTACT NAME: Megan Mahaffey or Janet Dutcher

PHONE/EMAIL: 760-924-1836 / mmahaffey@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
<input type="checkbox"/> Staff Report
<input type="checkbox"/> Resolution
<input type="checkbox"/> Mono County Homebuyers Guidelines
<input type="checkbox"/> Mono County Owner Investor Rehabilitation Guidelines
<input type="checkbox"/> Mono County Owner Occupant Rehabilitation Guidelines

History

Time	Who	Approval
11/16/2017 5:23 AM	County Administrative Office	Yes
11/16/2017 12:10 PM	County Counsel	Yes
11/9/2017 1:41 PM	Finance	Yes



DEPARTMENT OF FINANCE

AUDITOR-CONTROLLER

COUNTY OF MONO

Stephanie M. Butters
Assistant Finance Director
Auditor-Controller

Janet Dutcher, CPA, CGFM
Director of Finance

P.O. Box 556
Bridgeport, California 93517
(760) 932-5490
Fax (760) 932-5491

Date: November 21, 2017

To: Honorable Board of Supervisors

From: Patricia Robertson - Mammoth Lakes Housing
Megan Mahaffey - Mono County
Janet Dutcher - Mono County

Re: The adoption of the Mono County Homebuyer Guidelines, Owner Investor Rehabilitation Guidelines, and Owner Occupant Rehabilitation Guidelines.

Recommended Action: Adopt the Mono County Housing program guidelines.

Fiscal Impact: Potential increase in Housing Program funding from Community Development Block Grant program (CDBG).

Strategic Plan: The Mono County Housing programs move Mono County towards the Strategic Direction of understanding and addressing community needs. The Mono County Housing programs are needed to help alleviate the housing shortage and improve the quality of housing in Mono County.

Background: Mono County has a successful Homeownership assistance program that is operated by Mammoth Lakes Housing and funded by the state through the HOME and CDBG (Community Development Block Grant) programs. The Homebuyer program provides gap financing by way of 30 year deferred mortgages to income qualifying first-time homebuyers. The Mono County loan portfolio consists of five loans funded through the HOME program and eight loans funded through the CDBG program for a total valuation of \$1,572,090 ranging from \$62,000 to \$200,000. These thirteen loans leveraged \$2.35 million in real estate investment in unincorporated Mono County and housed thirteen local families.

Discussion: Mono County recently completed the Housing Needs Assessment. The Needs Assessment found that Mono County residents are interested in financial assistance for weatherization and energy efficiency upgrades as well as for minor home repairs. The CDBG grant application includes a request for funding for Homebuyer assistance as well as Housing Rehabilitation. The rehabilitation portion of the application includes funding for both Owner Investor as well as Owner Occupant rehabilitation. Board approved guidelines will make the Mono County Community Development Block Grant application for First-Time Homebuyer assistance and Housing Rehabilitation funding more competitive.

Attachments:

- Mono County Homebuyer Guidelines
- Owner Investor Rehabilitation Guidelines
- Owner Occupant Rehabilitation Guidelines
- Resolution adopting Housing Guidelines



R17-__

A RESOLUTION OF THE MONO COUNTY BOARD OF SUPERVISORS APPROVING THE MONO COUNTY HOMEBUYER PROGRAM GUIDELINES, THE MONO COUNTY OWNER INVESTOR REHAB GUIDELINES AND THE MONO COUNTY OWNER OCCUPANT REHAB GUIDELINES WITH JURISDICTIONAL CERTIFICATIONS

WHEREAS, the County of Mono wishes to continue its participation in the Community Development Block Grant (CDBG) Program for Homeownership assistance and extend the program to include Rehabilitation; and

WHEREAS, a requirement of that participation is that the County approve and execute a CDBG Homebuyer Program Guidelines, Owner Investor Rehabilitation Guidelines and Owner Occupant Rehabilitation Guidelines with Jurisdictional Certifications;

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MONO RESOLVES that:

SECTION ONE: The Board of Supervisors of the County of Mono hereby approves, and authorizes the Chair of the Board to adopt and execute, the Mono County Homebuyer Program Guidelines, the Mono County Owner Investor Rehabilitation Guidelines and the Owner Occupant Rehabilitation Guidelines with Jurisdictional Certifications, which is attached to this Resolution and incorporated by this reference.

PASSED, APPROVED and ADOPTED this 21st day of November, 2017, by the following vote, to wit:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Stacey Corless, Chair
Mono County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board

County Counsel

Mono County



Homebuyer Acquisition Only/ Acquisition with Rehabilitation Program Guidelines

For:

HOME Investment Partnerships Program

Community Development Block Grant
(CDBG) Program

CalHome Program

Serving the unincorporated areas of
the County of Mono

HOME Approved (10/27/15)

HOMEBUYER PROGRAM GUIDELINES

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HOMEBUYER PROGRAM GUIDELINES

1.0. GENERAL

The above-named entity, hereinafter referred to as the “Sponsor,” has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer one or more HCD-funded homebuyer programs. The homebuyer program described herein (the “Program”) is designed to provide assistance to eligible homebuyers in purchasing homes, also referred to herein as “housing units”, located within the Program’s eligible area, as described in Section 3.1.A. The Program provides this assistance in the form of deferred payment “silent” second priority loans as “Gap” financing toward the purchase price and closing costs of affordable housing units that will be occupied by the homebuyers as their primary residence. The Program will be administered by Mammoth Lakes Housing, (the “Program Operator”).

1.1. PROGRAM OUTREACH AND MARKETING

All outreach efforts will be done in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach and access to the Program. No person shall, on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender or sexual orientation be excluded, denied benefits or subjected to discrimination under the Program. The Sponsor will ensure that all persons, including those qualified individuals with handicaps, have access to the Program.

- A. The Fair Housing Lender and Accessibility logos will be placed on all outreach materials. Fair housing marketing actions will be based upon a characteristic analysis comparison (census data may be used) of the Program’s eligible area compared to the ethnicity of the population served by the Program (includes, separately, all applications given out and those receiving assistance) and an explanation of any underserved segments of the population. This information is used to show that protected classes (age, gender, ethnicity, race, and disability) are not being excluded from the Program. Flyers or other outreach materials, in English and any other language that is the primary language of a significant portion of the area residents, will be widely distributed in the Program-eligible area and will be provided to any local social service agencies. The Program may sponsor homebuyer classes to help educate homebuyers about the home buying process and future responsibilities. Persons who have participated in local homebuyer seminars will be notified about the Program.
- B. The Program Operator will work with local real estate agents and primary lenders to explain the Program requirements for eligible housing units and homebuyers, and to review Program processes. Local real estate agents and primary lenders will also be encouraged to have their customers participate in the Program.

- C. Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion of an otherwise qualified individual, solely by reason of disability, from participation under any program receiving Federal funds. The Program Sponsor will take appropriate steps to ensure effective communication with disabled housing applicants, residents and members of the public.

1.2. APPLICATION PROCESS AND SELECTION

- A. The Sponsor maintains a waiting list of applicants. Each applicant is asked to complete an application form, which asks for sufficient information concerning income, employment, and credit history to establish preliminary eligibility for Program participation. Completed applications are processed on a first-come-first-served basis. Applications are deemed complete only if all information is completed, the application is signed and dated, and a primary lender's pre-qualification letter is attached to the application. Incomplete applications are returned to the applicant and will not be date/time stamped until complete.
- B. Once the applicant's name comes to the top of the waiting list, their Program eligibility is confirmed and they are invited to a briefing regarding participation in the Program. At the briefing the application is reviewed and the potential homebuyer is given a "Preliminary Eligibility Letter" for the Program along with the following forms: Program Brochure, Attachment (G) Instructions to Home Buyer, List of Participating Lenders, Attachment (E) Sellers Lead-Based Paint Disclosure and the EPA Booklet (Protect Your Family from Lead in Your Home) and (F) Notice to Seller.

If the Program Operator encounters material discrepancies and/or misrepresentations, and/or there are income, asset, household composition, or other important questions that can't be resolved, the Sponsor reserves the right to deny assistance to the household. In this case, the applicant may re-apply after six months have elapsed from the time of written assistance denial.

- C. Each applicant must participate in individual Homebuyer Counseling provided by the Program Operator and receive a certificate of completion.
- D. The potential homebuyer is given 90 days in order to find a qualified home and begin securing a primary loan for the housing unit. If during the 90-day time frame, the potential homebuyer is unable to purchase a home, an extension may be given. However, if it appears the potential homebuyer cannot participate in the Program, the reservation of funds expires and the next person on the waiting list is given an opportunity to participate in the Program.

1.3. THE HOME PURCHASE PROCESS

A. The following is a simplified example of how a primary lender would analyze a homebuyer’s finances to determine how much the homebuyer could afford to borrow from the primary lender towards homeownership.

DEBT SERVICE		
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH		
HOUSING PAYMENTS		TOTAL OVERALL PAYMENTS
Principal & Interest Payment	\$ 865	\$1,180 Housing
Insurance	82	+200 Other Debt Service
Taxes	<u>233</u>	\$1,380 Total Debt Service
Total Housing Expense (PITI is 35% of \$3,388)	\$1,180	(Overall debt service per month is 41% of \$3,388)
OTHER HOUSEHOLD DEBT SERVICE		
Car Payment	\$ 150	
Credit Card Payment	<u>50</u>	
Total Other Debt	\$ 200	

A \$865 per month loan payment equates to borrowing \$143,000 at 5.88% for a 30 year term.

SUBSIDY CALCULATION	
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH	
Purchase Price of Property	\$ 280,000
Less Primary loan amount	143,000
Less down payment of 1%	<u>2,800</u>
Equals “GAP”	\$ 134,200
Plus estimated allowable settlement charges	<u>8,400</u>
Equals Total Subsidy	\$ 142,600

B. The housing unit selection process will be conducted by the homebuyers. Prior to making an offer to purchase an eligible housing unit (see Section 3.0), homebuyer shall provide seller with a disclosure containing the following provisions:

- 1) Homebuyer has no power of eminent domain and, therefore, will not

- acquire the property if negotiations fail to result in an amicable agreement;
and
- 2) Homebuyer's offer is an estimate of the fair market value of the housing unit, to be finally determined by a state licensed appraiser;
 - 3) The housing unit will be subject to inspection. The housing unit must comply with local codes at the time of construction and local health and safety standards.
 - 4) All housing units built prior to January 1, 1978 will require a lead paint disclosure to be signed by both the homebuyer and Seller (Attachment E);
 - 5) Since the purchase would be voluntary, the seller would not be eligible for relocation payments or other relocation assistance;
 - 6) The seller understands that the housing unit must be either: currently owner-occupied, newly constructed, or vacant for three months prior to submission of the purchase offer.
 - 7) If the seller is not provided with a statement of the above six provisions prior to the purchase offer, the seller may withdraw from the agreement after this information is provided.
- C. Applicant submits executed standard form purchase and sale agreement and primary lender prequalification letter to Program Operator. The purchase and sale agreement will be contingent on the household and housing unit meeting Program eligibility requirements and receiving Program loan approval. Program Operator verifies applicant eligibility, housing unit and loan eligibility and amount of assistance to be provided consistent with these guidelines.
- D. Program Operator where Program Operator is not the Sponsor submits recommendation to the Sponsor for approval or denial, including the reasons for the recommendation as well as all income calculation documentation. Sponsor determines Applicant's approval or denial, and instructs Program Operator to notify Applicant. Program Operator provides written notification to Applicant of approval or denial with reason and, if denied, a copy of the Program's appeal procedures.
- E. When Primary Lender requirements are met, Program funds are deposited into escrow, with required closing instructions and loan documents.
- F. At the time of escrow closing, the Sponsor shall be named as an additional loss payee on fire, flood (if required), and extended coverage insurance for the length of the loan and in an amount sufficient to cover all encumbrances or full replacement cost of the housing unit. A policy of Title Insurance naming the Sponsor as insured is also required.

1.4. HOMEBUYER COSTS

- A. Eligible households must document that they have the funds necessary for down payment and closing costs as required by the Primary Lender and the Sponsor.

The Program's down payment requirement (below) is in place even if the Primary Lender has a lower down payment requirement. If the Primary Lender has a higher down payment requirement, there is no additional down payment requirement required by the Program.

- B. Homebuyer must contribute a minimum down payment of one percent (1%) of the purchase price, but may contribute more if desired.
- C. Sponsor will not provide a subsidy that is greater than the amount of the primary mortgage nor greater than the maximum allowed loan based on current year restrictions from HCD. Current Income limits are found at: <http://www.hcd.ca.gov/financial-assistance/home-investment-partnerships-program/homelimits.html> The subsidy will write down the cost of the primary lender's loan so that the payments of PITI are within approximately 25 to 30% of the gross household income. The Program Operator will determine the level of subsidy and affordability during underwriting of the Program's loan to make sure that it conforms to the requirements of the HCD funding Program.

1.5. HOMEBUYER EDUCATION

Buying a home can be one of the most confusing and complicated transactions anyone can make. Providing the future homebuyer with informative homebuyer education training, can bring success to the Sponsor, Program Operator, the Program and most importantly, the homebuyer. It has been documented that first-time homebuyers that have had homebuyer education have the ability to handle problems that occur with homeownership. All Program participants are required to attend a Sponsor-approved homebuyer education class. The homebuyer education class will cover such topics as the following: preparing for homeownership; available financing; credit analysis; loan closing; homeownership responsibilities; home maintenance; impact of refinancing and loan servicing. Methods of homebuyer counseling and education may include, but are not limited to: one-on-one counseling between homebuyer, counselor and family/individual and/or group workshops and informational sessions. Tools of instruction may include fliers, brochures, power point presentations, worksheets, etc.

1.6. CONFLICT OF INTEREST REQUIREMENTS

When the Sponsor's program contains Federal funds, the applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall be followed for CDBG assistance. Section 92.356 of the HOME Final Rule shall be followed for HOME assistance, as follows:

(a) Conflicts prohibited. No persons described in paragraph (b) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business

or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild and in-laws of a covered person.

(b) Persons covered. The conflict of interest provisions of paragraph (a) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(c) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction to HCD, HUD may grant an exception to the provisions of paragraph (a) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. See 24 CFR 92.356(d)(1-6) for details on the documentation needed in order to submit an exception request to HUD.

A contractor with a vested interest in the property cannot bid on a rehabilitation job. Such a contractor may act as owner/builder, subject to standard construction procedures. Owner/builders are reimbursed for materials purchased which are verified by invoice/receipt and used on the job. Reimbursement occurs after the installation is verified by the Program Operator to be part of the scope of work. Owner/builders are not reimbursed for labor.

1.7. NON-DISCRIMINATION REQUIREMENTS

The Program will be implemented in ways consistent with the Sponsor's commitment to non-discrimination. No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under any program or activity funded in whole or in part with State funds on the basis of his or her religion or religious affiliation, age, race, color, creed, gender, sexual orientation, marital status, familial status (children), physical or mental disability, national origin, or ancestry, or other arbitrary cause.

2.0 APPLICANT QUALIFICATIONS

2.1. CURRENT INCOME LIMITS FOR THE AREA, BY HOUSEHOLD SIZE

All applicants must certify that they meet the household income eligibility requirements for the applicable HCD program(s) and have their household income documented. The income limits in place at the time of loan approval will apply when determining applicant income eligibility. All applicants must have incomes at or below 80% of the County's area median income (AMI), adjusted for household size, as published by HCD. (Attachment C).

Household: Means one or more persons who will occupy a housing unit. Unborn

children don't count in family size determination.

Annual Income: Generally, the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

2.2. INCOME QUALIFICATION CRITERIA

Projected annual gross income of the applicant household will be used to determine whether they are above or below the published HCD income limits. Income qualification criteria, as shown in the most recent HCD program-specific guidance at <http://www.hcd.ca.gov/fa/cdbg/GuideFedPrograms.html>, will be followed to independently determine and certify the household's annual gross income. The Program Operator should compare this annual gross income to the income the Primary Lender used when qualifying the household. The Primary Lender is usually underwriting to FHA or conventional guidelines and may not calculate the household income or assets in the same way as required by the Program. Income will be verified by reviewing and documenting tax returns, copies of wage receipts, subsidy checks, bank statements and third-party verification of employment forms sent to employers. All documentation shall be dated within six months prior to loan closing and kept in the applicant file and held in strict confidence.

A. HOUSEHOLD INCOME DEFINITION:

Household income is the annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine program eligibility. Refer to Income Inclusions and Exclusions for further guidance to the types of incomes to be included or excluded when calculating gross annual income. For those types of income counted, gross amounts (before any deductions have been taken) are used. Two types of income that are not considered would be income of minors and live-in aides. Certain other household members living apart from the household also require special consideration. The household's projected ability to pay must be used, rather than past earnings, when calculating income.

The link to Annual Income Inclusions and Exclusions is:

http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB_AnnualIncomeInclusionsExclusions.doc

See Attachment A: 24 CFR Part 5 Annual Income Inclusions and Exclusions

B. ASSETS:

There is no asset limitation for participation in the Program. Income from assets, however, is recognized as part of annual income under the Part 5 definition. An asset is a cash or non-cash item that can be converted to cash. The value of necessary items such as furniture and automobiles are not included. *(Note: it is the income earned – e.g. interest on a savings account – not the asset value, which is*

counted in annual income.)

An asset's cash value is the market value less reasonable expenses required to convert the asset to cash, including, for example, penalties or fees for converting financial holdings, and costs for selling real property. The cash value (rather than the market value) of an item is counted as an asset.

The Link to Asset Inclusions and Exclusions is:

http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC_AnnualIncomeAssetInclusionsExclusions.doc

See Attachment B: Part 5 Annual Income Net Family Asset Inclusions and Exclusions

2.3. DEFINITION OF AN ELIGIBLE HOMEBUYER

For CDBG, an eligible homebuyer means an individual or individuals or an individual and his or her spouse who meets the income eligibility requirements and is/are not currently on title to real property. Persons may be on title of a manufactured home unit, who are planning to sell the unit as part of buying a home located on real property. Documentation of homebuyer status will be required for all homebuyers. CDBG-funded programs may assist eligible homebuyers who are not “first-time” homebuyers.

HOME and CalHome-funded Programs are required to use the following definition of an eligible homebuyer, which is a “first-time homebuyer” from 8201(1) Title 25 California Code of Regulations:

“First-time homebuyer” means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with subsidy assistance, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:

1. a displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
2. a single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
3. an individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home

with assistance, a dwelling unit whose structure is:

- a. not permanently affixed to a permanent foundation in accordance with local or state regulations; or
- b. not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

3.0. HOUSING UNIT ELIGIBILITY

3.1. LOCATION AND CHARACTERISTICS

- A. Housing units to be purchased must be located within the eligible area. The eligible area is described as follows: “Within the unincorporated areas of the County of Mono.”
- B. Housing unit types eligible for the homebuyer Program are new or previously owned single-family residences; condominiums; or manufactured homes in mobilehome parks, in common-interest developments or on a single-family lot and placed on a permanent foundation system. HOME does not allow manufactured homes unless on a permanent foundation system.
- C. All housing units must be in compliance with State and local codes and ordinances.*
- D. Housing units located within a 100 year flood zone will be required to provide proof of flood insurance with an endorsement naming the County of Mono as loss payee in order to close escrow.
- E. Housing must be “modest”, having no more than three bedrooms, two bathrooms, and a two-car garage. Larger homes are acceptable if necessary for the following reasons:
 - The family size necessitates additional bedroom(s); or
 - A reasonable accommodation is necessary due to the family’s disability (e.g. an extra bedroom for an aide)

Exceptions must be approved by the Loan Committee and must be documented for monitoring purposes.

3.2. CONDITIONS

A. Construction Inspection and Determining Need for Repairs.

Once the participating homebuyer has executed a purchase agreement for a housing unit, and prior to a commitment of Program funds, the following steps must be taken for the housing unit to be eligible for purchase under the Program:

- 1) When the Sponsor's Program utilizes Federal funds and if the housing unit was constructed prior to 1978 then the lead-based paint requirements of Section 3.2.C will apply.
- 2) The Program Operator's certified housing inspector or a Sponsor representative will walk through the housing unit, determine if it is structurally sound, and identify any code related and health and safety deficiencies that need to be corrected. A list of code related repair items will be given to the homebuyers and their Realtor to be negotiated with the seller.

If there are one or more health and safety deficiencies, and/or violations of applicable building codes noted in the written report, the Sponsor will approve the subsidy only if:

- a. Repair prior to close of escrow. The buyer and seller agree to make necessary repairs to the dwelling unit prior to transfer of property ownership at their own expense; or
 - b. HOME acquisition and rehabilitation loan. If HOME funds are available, the buyer may use up to \$10,000 of the Sponsor's First-Time Homebuyer loan to make necessary repairs. *All health and safety hazards and code violations must be addressed under this option. Examples of allowable expenses include, but are not limited to: foundation repair, electrical repair or rewiring, plumbing or sewer repair, roof repair or replacement, heating system installation or repair, and repair of structurally-significant damaged wood.* General property improvements are not eligible unless required to bring the dwelling unit into compliance with local health and safety standards or applicable building codes. For example, sidewalk repair would not be an eligible use of funds. However, if a sidewalk must be removed to correct a sewer problem, funds may be used to replace the portion of the sidewalk removed for the work. Buyers should note that the use of any Program funds for rehabilitation on a home built before 1978 may incur additional lead-based paint testing. Hiring of a contractor and completion of repairs will be conducted in accordance with the section entitled "Acquisition with Rehabilitation Process" below.
- 3) With the exception of 1)b. above, upon completion of all work required by the Program Operator, Sponsor appraiser, pest inspector and/or certified housing inspector, a final inspection will be conducted prior to close of escrow. The

inspector will sign off on all required construction work assuring that each housing unit receiving Program assistance is in compliance with local codes and health and safety requirements at the time of purchase and prior to occupancy.

- B. Per Section 8208 of the State HOME regulations, no additional HOME assistance, including rehabilitation funds, may be provided during the period starting one year following the filing of the Project Completion Report through the end of the Affordability Period.

The HOME Affordability Period is as follows (amount does not include Activity Delivery Costs paid to the State Recipient by HCD):

Amount of HOME Assistance	Period of Affordability in Years
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

- C. Lead-Based Paint Hazards: All housing units built prior to 1978 for which HOME or CDBG funding is anticipated are subject to the requirements of this section 3.2.C. Such homes must undergo a visual assessment by a person who has taken HUD’s online Visual Assessment course. Deteriorated paint must be stabilized using work safe methods. Clearance must be obtained after paint stabilization by a DHS certified LBP Risk Assessor/Inspector. HOME and CDBG general administrative and activity delivery funds may be used to pay for lead-based paint visual assessments, and if lead mitigation and clearance costs are incurred, these programs may incorporate the costs into the calculation of Program assistance.

The following requirements must be met:

- 1) **Notification:** a) Prior to homebuyer’s obligation to purchase a pre-1978 home, the Buyer will be given the most recent copy of and asked to read the EPA pamphlet “*Protect Your Family From Lead in Your Home*”. (EPA 747-K-94-001). A signed receipt of the pamphlet will be kept in the Sponsor’s homebuyer file; b) A notice to residents is required following a risk assessment/inspection using form DHS 8552, which is provided by the DHS-certified Risk Assessor/Inspector; c) a notice to residents is required following lead-based paint mitigation work using Visual Assessment and Lead-based Paint Notice of Presumption and Hazard Reduction form, LBP – 1 (Attachment H).
- 2) **Disclosure:** Prior to the homebuyer’s obligation to purchase a pre-1978 housing unit, the HUD disclosure (Attachment E), “Seller’s Lead-based Paint Disclosure” notice must be provided by the seller to the homebuyer.
- 3) **Inspections:** The Inspector shall conduct a “Visual Assessment” of all the dwelling unit’s painted surfaces in order to identify deteriorated paint. All

deteriorated paint will be stabilized in accordance with CFR 35.1330 (a) and (b); and a Clearance shall be made in accordance with CFR 35.1340.

- 4) **Mitigation:** If stabilization is required, the contractor performing the mitigation work must use appropriately trained workers. Prior to the contractor starting mitigation work the Program Operator shall obtain copies of the contractor's and workers' appropriate proof of LBP training, as applicable to the job in order to assure that only qualified contractors and workers are allowed to perform the mitigation.
- D. The Program Operator will: 1) confirm that the housing unit is within the eligible area, 2) will review each proposed housing unit to ensure that it meets all eligibility criteria before funding, and 3) ensure a completed Lead Compliance Document Checklist is placed in each purchaser's file (see Attachment I).

3.3. ACQUISITION WITH REHABILITATION PROCESS

As noted above, when HOME funding is available for First-Time Homebuyer assistance, up to \$10,000 (from all sources) may be used to bring the unit into compliance with health and safety standards and/or to correct code violations. If such repairs are required, a portion of this money may be used to make accessibility modifications for a household member with a disability. General property improvements are not allowed, weatherization improvements are considered part of health and safety due to extreme winter weather and are allowed.

IMPORTANT: No later than six (6) months following close of escrow, repairs to the housing unit must address ALL health and safety and code issues, to be in compliance with HOME regulations; otherwise, the loan becomes due and payable.

If a portion of the Program loan is used for acquisition with rehabilitation, the following process will be followed:

- The buyer will be responsible for obtaining three (3) bids from qualified licensed contractors. The Sponsor's Program Operator has a list of qualified contractors, or the applicant may solicit bids from other licensed contractors if they meet the standards described below.
- Any funds used for rehabilitation on homes built prior to 1978 will require testing for lead based paint. If the total rehabilitation funds are equal to or less than \$5,000, all surfaces disturbed during rehabilitation and lead hazard reduction must be repaired using safe work practices. If total rehabilitation is between \$5,000 and \$10,000, lead based paint must either be presumed to be present or testing and risk assessment are required. Lead hazard reduction activities must be conducted using safe work practices. The Sponsor will provide a grant to cover all expenses incurred as a result of lead based paint as noted in the section entitled *Lead Based Paint Standards* below, but total rehabilitation, including this grant, may not exceed \$10,000.

- Contractors must hold a current and valid State of California General Contractor's license if the work consists of correction of health and safety issues or code violations. For accessibility modifications, the Sponsor may exercise discretion regarding contractors' requirements. The contractor may not be on the State or Federal debarred contractor lists. The contractor must have current and valid general liability and workmen's compensation insurance if applicable. The contractor must provide a one-year warranty for the work per State regulations.
- The buyer will review the bids with the Program Operator and/or the Sponsor to ensure that the scope of work will correct any deficiencies, that it only includes allowable expenses and that the bids are reasonable, competitive and complete.
- The applicant will select a contractor from one of the Sponsor's/Program Operator's approved bids. All bidding contractors will be notified of the status of their proposals.
- The applicant will enter into a contract with the contractor (see Attachment J).
- The contractor will be responsible for securing all required permits for the scope of work.
- Work may not commence until the close of the acquisition loan.
- As work progresses, the contractor shall provide the buyer with a completed Payment and Construction Approval form (Attachment K) to request progress payments as outlined in the contract terms. The form must be signed by the contractor, the buyer, the inspector, and the Program Operator before a payment may be issued to the contractor.
- Final payment of a 10% retention will be released to contractor once the contractor submits the following to the Program Operator: (1) lien releases from any subcontractors, material suppliers, and laborers; (2) final or signed off Building Inspection card for contracted work (if applicable); (3) Notice of Completion.

3.4. ANTI-DISPLACEMENT POLICY AND RELOCATION ASSISTANCE

Eligible homes will be those that are currently owner-occupied or have been vacant for three months prior to the acceptance of a contract to purchase. A unit is ineligible if its purchase would result in the displacement of a tenant. It is not anticipated that the implementation of the Program will result in the displacement of any persons, households, or families. However, if tenant-occupied homes are included in the Program and relocation becomes necessary, the activity will be carried out in compliance with Sponsor's relocation plan, which describes how those permanently displaced will be relocated and paid benefits in accordance with the following Federal laws.

A. **Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970**

The federal URA and Real Property Acquisition Policies, as amended by the URA Amendments of 1987, contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program for which HUD financial assistance (including CDBG and HOME) is provided. Requirements governing real property acquisition are described in Chapter VIII. The implementing regulations, 49 CFR Part 24, require developers and owners to take certain steps in regard to tenants of housing to be acquired, rehabbed or demolished, including tenants who will not be relocated even temporarily.

B. **Section 104(d) of the Housing and Community Development Act of 1974**

Section 104(d) requires each contractor (CHDO or State Recipient), as a condition of receiving assistance under HOME or CDBG, to certify that it is following a residential anti-displacement plan and relocation assistance plan. Section 104(d) also requires relocation benefits to be provided to low-income persons who are physically displaced or economically displaced as the result of a HOME or CDBG assisted project, and requires the replacement of low-income housing, which is demolished or converted. The implementing regulations for Section 104(d) can be found in 24 CFR Part 570(a).

3.5. **PROPER NOTIFICATION AND DISCLOSURES**

- A. Upon selection of a housing unit, a qualified seller and homebuyer will be given the necessary disclosures for the Program. The homebuyer must have read and signed all Program disclosure forms. Any and all property disclosures must be reviewed and signed by the homebuyer and seller.
- B. All owners who wish to sell their housing units must receive an acquisition notice (Attachment F) prior to submission of the homebuyer's original offer. This notice will be included in the contract and must be signed by all owners on title. The disclosure must contain the items listed in 1.3.B. (required for federally-funded programs).

4.0. **PURCHASE PRICE LIMITS**

The purchase price limits and appraised post-rehabilitation value for this Program shall not exceed the Maximum HOME Program Purchase Price/After-Rehab Value Limit for Sponsor's County as updated by HCD or HUD.

Note: For HOME- and CalHome-funded Programs the home purchase price of owner-occupied and homebuyer properties must be limited as follows: For CalHome-funded Programs, the purchase price can not exceed 100% of the area median purchase price

as established by comparable sales or information provided by the California Real Estate Association; for HOME-funded Programs the value (with or without rehabilitation) can not exceed 95 percent of the area median purchase price as established by HCD and HUD.

Attachment C: MAXIMUM PURCHASE PRICE/AFTER-REHAB VALUE LIMITS *Sponsor will update these limits annually as HCD provides new information.

5.0. THE PRIMARY LOAN

Prior to obtaining a loan from the Sponsor, a homebuyer must provide evidence of financing for the maximum amount the Primary Lender is willing to loan (the “primary loan”).

A. QUALIFYING RATIOS

The front-end (housing) debt-to-income ratio shall be between 25% and 35% and is the percentage of a borrower’s gross monthly income (before deductions) that would cover the cost of the loan principal and interest payment, property taxes, property insurance, mortgage insurance, and HOA dues, if any.

The back-end (total) debt-to-income ratio shall be between 25% and 45% and is the percentage of a borrower’s gross monthly income that would cover the cost of housing as described in the paragraph above, plus any other monthly debt payments like car or personal loans and credit card debt, as well as child support and alimony payments.

B. INTEREST RATE

The primary loan must have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA. No temporary interest rate buy-downs are permitted.

C. LOAN TYPE AND TERM

The primary loan shall be fully amortized and have a term “all due and payable” in no fewer than 30 years. There shall not be a balloon payment due before the maturity date of the Program loan.

D. IMPOUND ACCOUNT

All households will be required to have impound accounts for the payment of taxes and insurance to ensure they remain current.

6.0. THE PROGRAM LOAN

A. MAXIMUM AMOUNT OF PROGRAM ASSISTANCE

The amount of Program assistance to a homebuyer toward purchase of a home shall not exceed the maximum HOME subsidy limit for Sponsor's County per bedroom as designated by Section 221(d)(3) and shall never exceed the amount of the primary mortgage. See Attachment C. Any approved "grant" amount for lead-based paint evaluation and reduction activities or for relocation assistance shall be included in this amount.

B. NON-RECURRING CLOSING COSTS

Non-recurring costs such as credit report, escrow, closing and recording fees, and title report and title insurance, title updates and/or related costs may be included in the Program loan.

C. AFFORDABILITY PARAMETERS FOR HOMEBUYERS

The actual amount of a buyer's Program subsidy shall be computed according to the housing ratio parameters specified in Section 5.0.A. Each borrower shall receive only the subsidy needed to allow them to become homeowners ("the Gap") while keeping their housing costs affordable. The Program Operator will use the "front-end ratio" of housing-expense-to-income to determine if the amount of the proposed primary loan is acceptable and, ultimately, the Program subsidy amount required, bridging the gap between the acquisition cost (purchase price plus closing costs) less down payment, and the amount of the primary loan.

D. RATE AND TERMS FOR PROGRAM LOAN

All Program assistance to individual households shall be made in the form of deferred payment (interest and principal) loan.

The Program loan's term shall be for at least 30 years and can exceed the term of the primary loan by up to 15 years. Loan principle shall not be forgiven.

The Program loan's interest rate shall be 1% - 3% fixed simple interest. The Program loan's interest rate shall be 0% fixed simple interest for applicants below 50% of HUD Area Median Income, adjusted for household size; and 3% fixed simple interest for applicants from 50 – 80% of HUD Area Median Income, adjusted for household size.

All Program loan payments shall be deferred because the borrowers will have their repayment ability fully utilized under the primary loan. Loan principal shall not be forgiven, and the loan period cannot be extended, except for loans that are resubordinated when a rate and term refinance is approved, per Attachment D.

E. COMBINED LOAN-TO-VALUE RATIO

The loan-to-value ratio for a Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the sales price plus a maximum of up to 5 percent of the sales price to cover actual closing costs.

7.0. PROGRAM LOAN REPAYMENT

7.1. PAYMENTS ARE VOLUNTARY

Borrowers may begin making voluntary payments at any time.

7.2. RECEIVING LOAN PAYMENTS

A. Program loan payments will be made to:

Mono County Community Development Department
PO Box 347
Mammoth Lakes, CA, 93546

B. The Sponsor will be the receiver of loan payments or recaptured funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the Sponsor's Program Income Account, as required by HCD programs. The Program lender will accept loan payments from borrowers prepaying deferred loans, and from borrowers making payments in full upon sale or transfer of the property. All loan payments are payable to the Sponsor. The Sponsor may at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program.

7.3. DUE UPON SALE OR TRANSFER

In the event that an owner sells, transfers title, or discontinues residence in the purchased property for any reason, the principal balance of the DPL is due and payable, except:

A. The owner shall be assured a fair return on investment including the owner's investment and any capital improvement. If the Net proceeds are insufficient for the Sponsor to recapture the balance of Program Loan owed, the Sponsor shall share the Net proceeds with the owner in proportion to each party's investment in the property. The Net proceeds are the sales price less repayment of the primary loan, and closing costs.

B. If the owner of the property dies, and the heir to the property meets income requirements, the First-Time Homebuyer definition, and intends to occupy the home as a principal residence, the heir may be permitted, upon approval of the Sponsor, to assume the loan at the rate and terms the heir qualifies for under the

current participation guidelines. If the property owner dies and the heir does not meet eligibility requirements, the loan is due and payable.

- C. If an owner wants to convert the property to a rental unit, or any commercial or non-residential use, the loan is due and payable.
- D. The loan will be in default if the borrower fails to maintain required fire or flood insurance or fails to pay property taxes. See Attachment D on loan defaults for further information on property restrictions.

7.4. LOAN SERVICING POLICIES AND PROCEDURES

See Attachment D for local loan servicing policies and procedures. While the attached policy outlines a system that can accommodate a crisis that restricts borrower repayment ability, it should in no way be misunderstood: The loan must be repaid. All legal means to ensure the repayment of a delinquent loan as outlined in the Loan Servicing Policies and Procedures will be pursued.

7.5. LOAN MONITORING PROCEDURES

Sponsor will monitor Borrowers and their housing units to ensure adherence to Program requirements including, but not limited to, the following:

- A. Owner-occupancy
- B. Property tax payment
- C. Hazard insurance coverage
- D. Good standing on Primary loans
- E. General upkeep of housing units

8.0. PROGRAM LOAN PROCESSING AND APPROVAL

- A. Loan Processing

All homebuyers or their representatives will be sent out an eligibility packet with all the necessary forms, disclosures, information, and application. They should submit a complete application packet with all the Sponsor's Program loan documents executed as well as all the information from the Primary Lender. The Primary Lender should submit: 1) accepted property sales contract with proper seller notification; 2) mortgage application with good faith estimates and first mortgage disclosures; 3) full mortgage credit report and rent verification; 4) current third party income verifications and verifications of assets; 5) homeownership education certificate, if applicable; and 6) signed underwriting transmittal summary and final signed loan application, both from primary lender. Staff will work with local lenders to ensure qualified participants receive only the benefit from the Sponsor's Program needed to purchase the housing unit and that leveraged funds will be used when possible.

B. Creditworthiness

Qualifying ratios are only a rough guideline in determining a potential borrower's creditworthiness. Many factors such as excellent or poor credit history, amount of down payment, and size of loan will influence the decision to approve or disapprove a particular loan. The borrower's credit history will be reviewed by the Sponsor and documentation of such maintained in the loan file. The Sponsor may elect to obtain a credit report or rely on a current copy obtained by the primary lender.

C. Documents from Primary Lender

After initial review of the qualified homebuyer's application packet, the Program Operator will request any additional documents needed. Documents may be faxed, but originals shall be received through the mail before Program funds are committed to escrow. Based on receipt and review of the final documents, the Program Operator will do an income certification (using most recent HCD program's guidance on income calculation and determination), and homebuyer certification (review of credit report and income taxes). Documentation of affordability will then be verified and subsidy requirement determined.

D. Disclosure of Program and Loan Information to Homebuyers

The Program's application and disclosure forms will contain a summary of the loan qualifications of the borrower with and without Program assistance. Housing ratios with and without Program assistance are also outlined in these guidelines. Information on the Program's application will be documented with third party verifications in the file. For example, the sales contract will provide the final purchase price and outline how much of the closing costs are to be paid by the seller, etc. The appraisal, termite and title report will provide information to substantiate the information in the sales contract and guide the construction inspection. The Program loan application will provide current debt and housing information and will be documented by the credit report and income/asset verifications. The Primary Lender's approval letter and estimated closing cost statement should reflect all the information in the loan package and show any contingencies of loan funding. Reviewing the Primary Lender's loan underwriting documentation will provide basic information about the qualification of the applicant and substantiate the affordability provided by the Program loan. By reviewing and crosschecking all the Primary Lender information, the final Program loan amount approved will fall within the affordability parameters of the Program.

8.1. COMPLETION OF UNDERWRITING AND APPROVAL OF PROGRAM LOAN

Once the loan approval package has been completed the Program Operator will submit it

to the Sponsor for approval. Sponsor will review the request and may approve it with or without conditions. Upon approval, a final closing date for escrow is set and Program funds are accessed for the homebuyer.

8.2. PRIMARY AND PROGRAM LOAN DOCUMENT SIGNING

The homebuyer(s) sign promissory notes, loan agreements, deeds of trust, and statutory lending notices (Truth In Lending (TIL), etc.); the Deeds of Trust are recorded with the County Clerk/Recorder at the same time, and the request(s) for copy of Notice of Default are also recorded with the County Clerk/Recorder.

8.3. ESCROW PROCEDURES

The escrow/title company shall review the escrow instruction provided by the Program lender and shall issue a California Land Title Association (CLTA) and the American Land Title Association (ALTA) after closing. The CLTA policy is issued to the homebuyer and protects them against failure of title based on public records and against such unrecorded risks as forgery of a deed. The ALTA is issued to each lender providing additional coverage for the physical aspects of the property as well as the homebuyer's title failure. These aspects include anything which can be determined by only physical inspection, such as correct survey lines; encroachments; mechanics liens; mining claims and water rights. The Program lender instructs the escrow/title company in the escrow instructions as to what may show on the policy; the amount of insurance on the policy (all liens should be covered) and the loss payee (each lender should be listed as a loss payee and receive an original ALTA).

9.0. SUBORDINATE FINANCING

With today's high costs, in order for a low-income household to obtain a home, several funding sources might be required. Subordinate loans may be used to cover mortgage subsidy costs that exceed the Program maximum loan amount. All subordinate liens must have the payments deferred and the term must be for at least as long as the term of the Program loan.

10.0. EXCEPTIONS AND SPECIAL CIRCUMSTANCES

The Sponsor may make amendments to these Participation Guidelines. Any changes shall be made in accordance with regulations and approved by the Sponsor's Loan Committee and/or governing body. Changes shall then be sent to HCD for approval.

10.1. DEFINITION OF EXCEPTION

Any case to which a standard policy or procedure, as stated in the guidelines, does not

apply or an applicant treated differently from others of the same class would be an exception.

10.2. PROCEDURES FOR EXCEPTIONAL CIRCUMSTANCES

- A. The Sponsor or its agent may initiate consideration of an exception and prepare a report. This report shall contain a narrative, including the Sponsor's recommended course of action and any written or verbal information supplied by the applicant.
- B. The Sponsor shall make a determination of the exception based on the recommendation of the Program Operator. The request can be presented to the Sponsor's loan committee and/or governing body for a decision.

11.0. DISPUTE RESOLUTION AND APPEALS PROCEDURE

Any applicant denied assistance from the Program has the right to appeal. Complaints concerning the Program should be made to the Program Operator first. If unresolved in this manner, the complaint or appeal must be made in writing and filed with the Sponsor. The Sponsor will then schedule a meeting with the Loan Review Committee. Their written response will be made within thirty (30) working days. If the applicant is not satisfied with the Committee's decision, a request for an appeal may be filed with the Sponsor's governing body. Final appeal must be filed in writing with HCD within one year after denial.

ATTACHMENT A

24 CFR Part 5 ANNUAL INCOME INCLUSIONS AND EXCLUSIONS

Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except for certain exclusions, listed in Income Exclusions, number 14).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except for certain exclusions, listed in Income Exclusions, number 3).
6. Welfare Assistance	Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income: <ul style="list-style-type: none"> • Qualify as assistance under the TANF program definition at 45 CFR 260.31; and • Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: <ul style="list-style-type: none"> • the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus: • the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except for certain exclusions, listed in Income Inclusions, number 5).

4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR5.403).
6. Income from a Disabled Member	Certain increase in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671 (a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. "Hostile Fire" Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> a. Amounts received under training programs funded by HUD. b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS). c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time. e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparation Payments	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	<p>Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:</p> <ul style="list-style-type: none"> ▶ The value of the allotment provided to an eligible household under the Food Stamp Act of 1977; ▶ Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through AmeriCorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); ▶ Payments received under the Alaskan Native Claims Settlement Act; ▶ Income derived from the disposition of funds to the Grand River Band of Ottawa Indians; ▶ Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; ▶ Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program. ▶ Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721); ▶ The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims

Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;

- ▶ Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs;
- ▶ Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- ▶ Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- ▶ Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- ▶ The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;
- ▶ Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps).
- ▶ Payments by the Indians Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- ▶ Allowances, earnings, and payments to AmeriCorps participants under the National and Community Services Act of 1990;
- ▶ Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- ▶ Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
- ▶ Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

ATTACHMENT B

PART 5 ANNUAL INCOME NET FAMILY ASSET INCLUSIONS AND EXCLUSIONS

This table presents the Part 5 asset inclusions and exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

Statements from 24 CFR Part 5 – Last Modified: January 2005

Inclusions

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
5. Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

Exclusions

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e., where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

ATTACHMENT C

MAXIMUM PURCHASE PRICE/AFTER-REHAB VALUE LIMIT FOR MONO COUNTY (HOME Value Limits as of 3/1/17)

EXISTING CONSTRUCTION	NEW CONSTRUCTION (less than 12 months old)
\$380,000	\$380,000

HOME SUBSIDY LIMITS PER UNIT (Limits became effective 5/24/17)

COUNTY NAME	0-BDR	1-BDR	2-BDR	3-BDR	4-BDR
ALL COUNTIES	\$141,089	\$161,738	\$196,673	\$254,431	\$279,286

INCOME LIMITS FOR Mono COUNTY* (Limits became effective 6/15/17)

<i>Number of Persons in Household</i>								
	1	2	3	4	5	6	7	8
80% of AMI	\$42,500	\$48,550	\$54,600	\$60,650	\$65,550	\$70,400	\$75,250	\$80,100

*Sponsor will insert the limits for the county in which the Program is located, and will update the income limits annually as HCD provides new information. The link to the official, HCD-maintained, income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>

ATTACHMENT D

LOAN SERVICING POLICIES AND PROCEDURES FOR MONO COUNTY

The County of Mono, hereafter called “Lender,” has adopted these policies and procedures in order to preserve its financial interest in properties whose “Borrowers” have been assisted with public funds. The Lender will to the greatest extent possible follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions, which are associated with them.

The policies and procedures are broken down into the following areas: 1) making required monthly payments or voluntary payments on a loan’s principal and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) loans with annual occupancy restrictions and certifications 5) required noticing and limitations on any changes in title or use of property; 6) required noticing and process for requesting a subordination during a refinance; 7) processing of foreclosure in case of default on the loan.

1. Loan Repayments:

The Lender will collect monthly payments from those borrowers who are obligated to do so under Notes which are amortized promissory notes (or Lender will use _____ loan collection Company to collect payments). Late fees will be charged for payments received after the assigned monthly due date.

For Notes which are deferred payment loans, the Lender must accept voluntary payments on the loan. Loan payments will be credited to principal. The borrower may repay the loan balance at any time with no penalty.

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a junior lien. If borrower fails to maintain the necessary insurance, the Lender may take out force placed insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower’s new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance with an endorsement naming the County of Mono as additional insured will be required at close of escrow. The lender will verify the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes then the lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower's loan is in second position behind an existing first mortgage, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify the lender of initiation of a foreclosure action. The Lender will then have time to contact the Borrower and assist them in bringing the first loan current, if possible. The Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Lender is in a third position and receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

4. Annual Occupancy Restrictions and Certifications:

On owner-occupant loans, the Lender will require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Some loans may have income and housing cost evaluations, which require a household to document that they are not able to make amortized loan payments, typically every five years. These loan terms are incorporated in the original Note and Deed of Trust.

5. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original Program terms and conditions such that it remains available as an affordable home for low-income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Lender. Changes in title or occupancy must be in keeping with the objective of benefit to low-income households (below 80 percent of AMI).

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Lender's Loan Committee (depends on the HCD program).

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on household size and household income, provided the heir is income eligible. If the heir intends to occupy the property and is not low-income, the balance of the loan is due and payable. For CDBG only, if the heir intends to act as an owner-investor (not permitted under HOME), the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Lender's Loan Committee.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner-occupied to rental, the loan is due in full.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Lender allow for a partial conversion where some of the residence is used for a business but the household still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

6. Requests for Subordinations:

When a Borrower wishes to refinance their existing first mortgage, they must submit a subordination request to the Sponsor. The Sponsor will subordinate their loan only when there is no "cash out" as part of the refinance. No cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third-party debt payoffs or additional encumbrances on the property above traditional refinance transaction costs. The refinance should lower the existing housing cost of the household. The total indebtedness on the property should not exceed the current market value except when the borrower is obtaining a HARP II or other similar federally approved refinance loan. If the HARP II or other similar financing is approved and meets all other requirements, combined Loan-To-Value will not be considered when reviewing the subordination request.

Also, the loan must:

1. be fully amortized and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA;
2. not have a temporary interest rate buy-down;
3. have a term "all due and payable" that matures prior to or concurrently with the maturity date of the Promissory Note. Therefore, the maturity date of the existing Promissory Note should be modified to coincide with the maturity date of the new first mortgage; and,
4. not have a balloon payment due before the maturity date of the Program loan.

Upon receiving the proper documentation from the refinance lender, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Sponsor.

7. Process for Loan Foreclosure:

Upon any condition of loan default: 1) non-payment; 2) lack of insurance or property tax payment; 3) change in title or use without approval; 4) default on senior loans, the Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can provide future payments. If this is the case then the Lender may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien may be eliminated due to insufficient sales proceeds.

Lender as Senior Lien holder

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- 1) Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- 2) Can the Borrower refinance with a private lender and pay off the Lender?
- 3) Can the Borrower sell the property and pay off the Lender?
- 4) Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- 5) Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise the Lender of all required documentation to

initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

ATTACHMENT E
SELLERS LEAD-BASED PAINT DISCLOSURE
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller’s Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
- (i) ___ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
- _____
- (ii) ___ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
- (i) ___ Seller has provided the purchaser with all available records and reports pertaining to Lead-based paint and/or lead-based paint hazards in the housing (list documents below).
- _____
- (ii) ___ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser’s Acknowledgment (initial)

- (c) ___ Purchaser has received copies of all information listed above.
- (d) ___ Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- (e) ___ Purchaser has (check (i) or (ii) below):
- (i) ___ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- (ii) ___ waived the opportunity to conduct a risk assessment or inspection for the presence of Lead-based paint and/or lead-based paint hazards (NOT PERMISSIBLE FOR HOME AND CDBG).

Agent’s Acknowledgment (initial)

- (f) ___ Agent has informed the seller of the seller’s obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

ATTACHMENT F

Disclosure to Seller with Voluntary, Arm's Length Purchase Offer

DECLARATION

This is to inform you that _____ would like to purchase the property, located at _____, if a satisfactory agreement can be reached. We are prepared to pay \$_____ for a clear title to the property under conditions described in the attached proposed contract of sale.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

1. The sale is voluntary. If you do not wish to sell, the buyer, _____, thru the agency, _____ will not acquire your property. The buyer does not have the power of eminent domain to acquire your property by condemnation (i.e. eminent domain) and the agency/Sponsor _____ will not use the power of eminent domain to acquire the property.
2. The estimated fair market value of the property is \$_____ and was estimated by _____, to be finally determined by a professional appraiser prior to close of escrow.

Since the purchase would be a voluntary, arms length, transaction you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation. Also, as indicated in the contract of sale, this offer is made on the condition that no tenant will be permitted to occupy the property before the sale is completed.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property under the conditions described in the attached contract of sale, please sign the contract and return it to us at: _____ . If you have any questions about this matter, please contact _____ at _____.

Sincerely,

Title

Buyer

Date

Buyer

Date

Form continues on next page with Seller's Acknowledgment

Disclosure to Seller with Voluntary, Arm's Length Purchase Offer (Page 2)

Acknowledgement

As the Seller I/we understand that the _____ will inspect the property for health and safety deficiencies. I/we also understand that public funds may be involved in this transaction and, as such, if the property was built before 1978, a lead-based paint disclosure must be signed by both the buyer and seller, and that a Visual Assessment will be conducted to determine the presence of deteriorated paint.

As the Seller, I/we understand that under the Mono County program, the property must be currently owner-occupied, vacant for three months at the time of submission of purchase offer, new (never occupied), or renter purchasing the unit. I/we hereby certify that the property is:

Vacant at least 3 months; Owner-occupied; New; or Being Purchased by Occupant

I/we hereby certify that I have read and understand this "Declaration" and a copy of said Notice was given to me prior to the offer to purchase. If received after presentation of the purchase offer, I/We choose to withdraw or not to withdraw, from the Purchase Agreement.

Seller

Date

Seller

Date

ATTACHMENT G
THE COUNTY OF MONO

INSTRUCTIONS TO HOMEBUYER

- A. Participant works with lender of choice to obtain the primary lender's pre-qualification letter.
- B. After consultation with Program Operator regarding approved bedroom and bathroom maximums (always 3 bedrooms and 2 bathrooms unless extenuating circumstances justify more to be approved), participant works with real estate agent to select home. Program disclosures are reviewed with agent for presentation to seller. The HOME Program allows only homes vacant for three months or more prior to the date of the purchase contract, unless the current tenant is purchasing the home.
- C. Participant selects home and enters into a purchase contract (contingent upon receiving Program loan approval). Lender provides the Program Operator with a copy of:
- real estate sales contract
 - residential loan application and credit report
 - verified income documentation
 - disclosure statement
 - proof of personal funds for participation in program
 - breakdown of closing costs
 - structural pest control clearance
 - appraisal with photos and preliminary title report
- D. Program Operator reviews paperwork to determine program eligibility and financing affordability for participant.
- E. Program Operator staff meets with qualified applicant to provide information relative to the program requirements, the lending process, and homeownership responsibilities.
- F. Program Operator has home inspected to document health & safety and code compliance. Notice of any deficiencies or needed corrections are given to participant's real estate agent, with recommended course of action.
- G. Program Operator requests loan approval from Sponsor's Loan Review Committee. Following loan approval, Program Operator prepares Deed of Trust, Promissory Note, Request for Notice of Default, Grant Agreement, Owner-Occupant Agreement with Mono County, and Escrow Instructions, and requests check and deposits same into escrow.
- H. Escrow company furnishes Program Operator with proof of documents to be recorded, and any escrow closeout information. After receipt of recorded loan documents, Final HUD-1, Insurance Loss Payee Certification and Final Title Insurance Policy (Program Operator) closes out the loan file.

**ATTACHMENT H
LEAD-BASED PAINT**

VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION FORM

Section 1: Background Information			
Property Address:			No LBP found or LBP exempt <input type="checkbox"/>
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

Section 2: Visual Assessment. Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found.	

Section 3: Notice of Presumption. Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint <i>hazards</i> are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption:	

Section 4: Notice of Lead-Based Paint Hazard Reduction Activity. Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity		
Printed Name:	Signature:	Date:

Section 6: Contact Information		Organization:
Contact Name:		Contact Signature:
Date:	Address:	Phone:

ATTACHMENT I

Homebuyer Program Lead Compliance Document Checklist

The following documents should be in each Homebuyer unit file to document compliance with the lead requirements:

Document Name	Purpose	✓
Lead Safe Housing Rule Screening Sheet	Documents exemptions	
Physical inspection form (HQS or equivalent)	Documents visual assessment results	
Seller Certification	Seller certifies that paint was stabilized by qualified workers and that safe work practices were followed during paint stabilization	
Clearance Report and Clearance Review Worksheet	Documents that unit passed clearance	
Disclosure Form	Documents that buyer received disclosure and pamphlet.	
Lead Hazard Reduction Notice	Documents that buyer received required lead hazard reduction notification.	

This was taken from the HUD Website at:

<http://www.hud.gov/offices/cpd/affordablehousing/training/leadsafe/usefulforms/index.cfm#crosscutting>

ATTACHMENT J

ACQUISITION WITH REHABILITATION CONSTRUCTION CONTRACT

Home Improvement Construction Contract

This Home Improvement Construction Contract is entered into this _____ day of _____, 20____, between the following parties: (Owner(s) Name): _____ and (Contractor's Name and Address): _____

(Notice of Cancellation, see paragraph 28, may be sent to Contractor at the above address).

The parties agree as follows:

1. **Work to be Performed:** Contractor agrees to provide a Schedule of Work, in accordance with the Work Write-up (Attachment 1) and furnish all supervision, technical personnel, labor, materials, tools and equipment necessary to complete the work described in the work write-up attached hereto at the real property commonly described as: _____ Contractor will be responsible for all construction means, methods, techniques, sequences and procedures and for the coordination of all portions of the work under the Contract. All materials shall be new, unless otherwise specified, and of good quality. Owner has a right to require the Contractor to have a performance and payment bond; the expense of the bond may be borne by the Owner.
2. **Contract Price:** Owner agrees to pay Contractor the sum of \$_____ for the work to be performed.
3. **Completion Time:**
 - a. **Approximate Start Date:** The Contractor agrees to file a complete permit application within ten (10) days after receipt of written Notice to Proceed from the Owner. Owner and Contractor agree that the Start Date of construction shall be the date the permits are issued by the County of Mono. In no event shall the Contractor commence work or place any materials on the site thereof prior to receipt of Notice to Proceed from the Owner.
 - b. **Approximate Completion Date:** Contractor shall prosecute the work diligently and continuously to completion. The work shall be completed within _____ days after the Start Date, subject to such delays as are permissible under paragraph 7 herein below.
4. **Payment:**
 - a. Price will be paid to Contractor in installments based on completion of work tasks and individual item prices on the Work Write-up attached, and any Change Orders.
 - b. Contractor shall submit all required payment forms to Owner for approval of payment. Prior to authorization of payment, the Contractor shall provide lien releases for claims by subcontractors, laborers, and material suppliers involved in the work and/or represented by Contractor's invoices. Owner may also request written guarantees and warranties.
 - c. After approval by Owner, Contractor shall submit payment request forms to Mammoth Lakes Housing, hereinafter referred to as "MLH." MLH shall then make payment to the Contractor. MLH may, at its option, inspect the work to ensure that it has been satisfactorily completed in accordance with the Contract requirements. Should MLH determine that work has not been performed in accordance with the Contract, MLH may, in its sole discretion, withhold or reduce payment in accordance with the terms of the agreement between Owner and MLH.
 - d. At the time the work is completed, the Contractor shall submit the final pay request along with the recorded Notice of Completion, final building inspection report, insulation certificate, any

warranties and guarantees, conditional lien releases, and Section 3 report (for contracts over \$100,000).

- e. An amount equal to ten percent of the total Contract price, including any Change Orders, will be withheld by Owner and shall be paid to Contractor 35 days after notice of completion has been recorded, final inspection by the jurisdiction's building official and approval by Owner, provided that Contractor is not in default under this Contract. Final payment will be subject to withholding any amounts due to Owner for actual costs due to unexcused delays.
 - f. The payment of any progress payment shall not constitute acceptance of defective work or improper material, nor is it a waiver of the warranties or any other remedies to which the Owner may be entitled under the terms of this Contract
5. Relationship of the Parties: Work to be performed under this Contract is financed by funds from Mono County and administered by MLH. Owner is solely responsible for monitoring all work performed under this Contract and enforcing the terms of this Contract. MLH shall inspect all work for the purposes of monitoring loan disbursements in accordance with terms of this Contract and enforcing the terms of the loan agreement. Inspections performed by MLH are solely for the protection of the lender and solely for the purpose of assuring that the construction is progressing reasonably and that the lender's collateral interest is adequately protected. Owner acknowledges that MLH's inspections are not for the purpose of assuring Contractor's compliance with applicable building codes. Neither Mono County nor MLH shall be liable under any circumstances for MLH's failure to discover or require correction by Contractor of work that fails to comply with applicable building codes or for its failure to discover or require correction of any dangerous condition or defective work by contractor or by any subcontractor.

Neither Mono County nor MLH shall not, under any circumstances, have any liability either to the Owner or to the Contractor for any disbursement or refusal to approve of any disbursement requested by Contractor.

6. Failure to Commence Work: Failure by the Contractor without lawful excuse to substantially commence work within 20 days from the date specified in the Notice to proceed is a violation of the Contractors' License Law.
7. Excusable Delays: Contractor shall not be charged with delay in the completion of the work due to: any acts of Owner which cause delay; general strikes; acts of God or the public enemy; unavailability of materials, or casualty beyond Contractor's control, provided, however, that Contractor promptly (within 14 days) notifies Owner, in writing, of the cause of the delay. If the facts show the delays to be excusable under the terms of the Contract, the time for completion shall be extended for a period equal to the amount of time due to such delay.
8. Unexcused Delays: The parties agree that the Owner would incur additional expenses as a result of Contractor's unexcused delays in the completion of the work. "Additional expenses" shall include but not be limited to housing and storage costs incurred by the owner due to the inability to fully occupy the property.
9. Provisions for the Owner: While this Contract is in force, Owner shall permit Contractor the use of existing utilities including light, heat, power, and water, without charge, in order to carry out and complete the work. Owner may continue to occupy the premises during the rehabilitation but shall cooperate with Contractor to facilitate the performance of the work including the abandonment of limited areas as may be essential to the conduct of the work.
10. Compliance with the Law: By signing this contract, the Contractor certifies that it is licensed and in good standing in California, and not listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors. Contractors are regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding

a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826. All work shall be completed in strict compliance with the laws, ordinances, rules, regulations and Codes of the State, County, and local governments, whether such applicable laws, ordinances, rules, regulations and codes are mentioned in this Contract or not. Contractor shall obtain, pay for, and provide permits and licenses, as required to complete all work outlined under this Contract.

Where applicable, Contractor agrees to the following provisions:

- a) Standard Contract Language, All Contracts and Subcontracts, pertaining to civil rights, HCD, age discrimination, rehabilitation acts assurance, etc. (see Attachment 2).
- b) By the statement below, Contractor hereby furnishes Owner with Contractor Notice in compliance with California Business and Professions Code Section 7159:

INFORMATION ABOUT THE CONTRACTORS' STATE LICENSE BOARD (CSLB)

CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P. O. Box 26000, Sacramento, CA 95826

- c) The contractor hereby agrees to abide by the requirements of Executive Order 11246 and all implementing regulations of the Department of Labor.

11. Notice to Owner (see Attachment 3).

12. Required Insurance: Contractor shall obtain and keep in effect during the life of this contract, insurance in the following minimum amounts:

Worker's Compensation and Employer's Liability Insurance meeting the statutory requirements of the State of California.

Comprehensive General Liability and Property Damage Insurance with Combined Single Limits of at least \$1,000,000. This insurance shall be on an occurrence basis and shall protect the Contractor against liability arising from: Contractor's operations, operations by subcontractors, products, completed operations or professional liability where applicable and contractual liability assumed under the indemnity provisions above insured. Any Excavation, Collapse and

Underground exclusions must be deleted when applicable to operations performed by the Contractor or his subcontractors.

An original certificate of such insurance shall be filed with MLH. Said certificate shall evidence coverage through the life of this Contract.

13. Safety to Public and Property: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. In such, Contractor shall provide reasonable protection to prevent damage, injury, and loss to: all employees on the work, all work and materials and equipment to be incorporated therein and other property at the site or adjacent thereto, including trees, shrubs, lawns, pavements, structures, and utilities not designated for removal or replacement under the terms of this Contract.
14. Hold Harmless: With the exception that this Section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify and save harmless Owner, Mono County and MLH, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Contractor's operations to be performed under this Agreement for, but not limited to:
 - (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to any employees or agents of Owner, Mono County, MLH, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose act Contractor may be liable regardless of whether such injury or damage is caused by a party indemnified hereunder.
 - (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor.
 - (c) Infringement of any patent rights which may be brought against Mono County, MLH or Owner arising out of Contractor's work.
 - (d) Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Mono County, MLH or Owner from such claims or liens.
 - (e) Contractor's failure to fulfill the covenants set forth in collective bargaining agreement, wage order or any other agreement or regulation concerning labor relations.
 - (f) Failure of Contractor to provide Casualty Insurance.
 - (g) Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Mono County, MLH's or other's equipment, hoist, elevators, or scaffolds. The indemnification provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner Mono County, or MLH or their agents or employees. Contractor, however, shall not be obligated under this Agreement to indemnify Owner Mono County, or MLH for Claims arising from the sole negligence or willful misconduct of Owner Mono County, or MLH or their agents, employees or independent contractors who are directly responsible to Owner Mono County, or MLH, or for defects in design furnished by such persons.
 - (h) Contractor shall:
 - i. At Contractor's own costs, expense and risk, defend any claims that may be brought or instituted by third persons, including but not limited to, governmental

- agencies or employees of Contractor, against Mono County, MLH or Owner or their agents or employees or any of them;
- ii. Pay and satisfy any judgment or decree that may be rendered against Mono County, MLH or Owner or their agents or employees, or by any of them, arising out of any such Claim; and/or
 - iii. Reimburse Mono County, MLH or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.
- (i) All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Contractor exclusively until the completed work is accepted by Mono County or MLH.
 - (j) The indemnities set forth in this Section shall not be limited by any insurance requirements set forth elsewhere within this agreement.
15. Assignment: Contractor shall not assign or transfer any right or obligation under this Contract without first obtaining the written consent of Owner. Any attempted assignment by Contractor shall be void.
16. Changes in Work to be Performed: No changes shall be made in the work, Contract price or Contract time for completion of work, except by written change order. The change order shall bear the signatures of the parties to this Contract and approved (by signature) as to propriety with funding requirements by Mono County and MLH. No claim for an adjustment of Contract work, price or time will be valid unless so ordered. Payment for change orders that bear additional cost shall be made in accordance with paragraph 4, above.
17. Guarantees and Material Warranties: All labor, materials and installation shall be guaranteed for a period of one year from the date of final acceptance by Owner, when subjected to normal use and care, and provided Owner has complied, in full, with the terms and payments and other conditions of this Contract. Upon written notice from Owner, Contractor shall repair or remedy any defect in materials and workmanship within the one-year period specified. Contractor shall furnish Owner with and assign to Owner all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under this Contract.
18. Surplus Materials and Clean-up of Premises: All materials and equipment removed and not reused as a condition of this Contract shall remain or become the property of Owner, unless otherwise so stated in writing. All surplus materials as well as all rubbish and construction debris resulting from construction activities shall be removed promptly from the job site by Contractor. Upon completion of the work, Contractor shall leave the building and premises in a "broom-clean" condition.
19. Divisibility: It is intended that each paragraph of this agreement shall be viewed as separate and divisible, and in the event that any paragraph shall be held to be invalid, the remaining paragraphs shall continue to be in full force and effect.
20. Materials Restriction: Lead base paint hazards specified in the work write-up shall be mitigated in accordance with Federal Lead Based Paint regulations listed at 24 CFR 35. All new paint used must be a non-lead based paint.
21. Arbitration:
- a. Should any controversy arise out of or related to this Contract or the breach thereof, that falls within the provisions of 7085 et seq. of the California Business and Professions Code, other than a controversy based upon your failure to comply with a notice to return to the project under paragraph 23, the parties shall agree to submit the issue to Contractors State License

Board (CSLB) arbitration. The decision of the arbitrator is final and binding on both parties. CSLB will pay for the hearing, the arbitrator, and the services of one Board-appointed expert witness per complaint. The parties are responsible for their own attorney fees, if any, and additional expert witnesses, if any.

- b. Any controversy arising out of or relating to this Contract, or the breach thereof, that does not qualify for CSLB arbitration, or the parties do not agree to CSLB arbitration, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order whom shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party prevailing in any arbitration proceeding and in any litigation arising out of or relating to this contract shall be entitled to recover from the other all attorneys' fees and costs of arbitration.
22. Mechanics Liens: Contractor shall pay promptly all valid bills and charges for materials, labor or otherwise, in connection with or arising out of the rehabilitation of said property and will hold Owner free and harmless against all of them, filed against the property or any part thereof, and from and against all expense and liability in connection therewith, including but not limited to, court costs and attorneys' fees resulting or arising there from. Should any liens or claim of liens be filed for record against the property, or should Owner receive notice of any unpaid bill or charge in connection with the Contract, Contractor shall forthwith pay and discharge the same and cause the same to be released of record. Contractor authorizes MLH to issue joint checks as part of any disbursement otherwise payable to Contractor whenever MLH, in its sole discretion, determines that payment in this fashion is necessary in order to protect the interests of the Lender or the Owner. (See also, Notice to Owner, Attachment 3).
23. Termination of Contract: Should Contractor commit any of the acts specified in this paragraph, the Owner may, give 72 hours' notice in writing thereof to Contractor, to commence and continue thereafter to diligently prosecute the correction thereof, and if contractor fails to do so, then without prejudice to any other rights or remedies given Owner by law or by this contract, Owner may terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and, complete said project by whatever method Owner may deem expedient. Contractor shall be deemed to have committed an act specified in this paragraph if contractor shall:
- a. refuse or fail to supply enough properly skilled workers or proper materials to complete said project in the time specified in this contract and in the approved time schedule.
 - b. fail to make prompt payment to subcontractors, laborers, or material men for labor performed on or materials furnished to said project;
 - c. fail to comply with the time schedule for completion of the project;
- The preceding notwithstanding, the following actions by the Contractor shall be deemed to be material breaches of the contract which are not subject to cure. Should Contractor commit any of the acts specified in this paragraph, the Owner may, by giving 72 hours' notice in writing thereof to Contractor, without prejudice to any other rights or remedies given Owner by law or by this contract, terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and complete said project by whatever method owner may deem expedient:
- d. Commence with any proceedings of bankruptcy;
 - e. make a general assignment for the benefit of contractors;

- f. persist in disregarding any law or ordinance relating to said project or the completion thereof;
 - g. suffer the revocation or suspension of its contractor's license.
24. Rights on Termination by Owner: Should Owner terminate the service of Contractor under this contract and complete said project pursuant to Paragraph 10 of this contract, the Contractor shall not be entitled to receive any further payment under this contract until said project is fully completed. On completion of said project by Owner, if the unpaid balance of the contract price exceeds the expenses incurred by Owner in completing said project, including any compensation paid by Owner for managerial, administrative, or supervisory services in completing said project, such excess shall be paid by Owner to Contractor. If the expense incurred by Owner in completion of said project exceeds the unpaid balance of the purchase price, Contractor shall pay such excess to Owner with thirty days following written demand by Owner.
25. Force Majeure: Neither Owner nor Contractor shall be deemed to be in default if performance of the improvements required by this contract is delayed or becomes impossible because of any act of God, war, earthquake, fire, civil commotion, epidemic, act of government, its agencies or officers, court order, or any other legitimate cause beyond the control of the party and not caused by the negligent, unreasonable or intentional acts of the party.
26. Availability of Funds: In the event the loan or grant of funds upon which this Contract is contingent is not approved, this Contract shall be considered null and void, and shall not create any liability to either Owner or Contractor.
27. Contract Nullity: This entire Contract shall be considered null and void if either of the following shall occur:
- a. Owner is not approved for funding to finance the Contract Price;
 - b. Owner chooses not to proceed with the project before construction begins.
28. Three-Day Right to Cancel: **“You, the Owner, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the Contractor at the Contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of this contract including this notice.**

If you cancel, the Contractor must return any moneys paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the Contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the Contractor’s instructions on how to return the goods at the Contractor’s expense and risk. If you do make the goods available to the Contractor, and the Contractor does not pick them up within 20 days of the date of your notice of cancellation, you make keep them without any further obligation. If you fail to make the goods available to the Contractor, or if you agree to return the goods to the Contractor and fail to do so, then you remain liable for performance of all obligations under this Contract.”

29. **“You, the Owner, are entitled to a completely filled in copy of this Contract, signed by both you and the Contractor, before any work may be started.”**

THE OWNER AND THE CONTRACTOR ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO ALL PROVISIONS OF THIS CONTRACT INCLUDING ALL ADDITIONAL CONTRACT DOCUMENTS.

OWNER(S): _____

CONTRACTOR: _____

By: _____

Business Name: _____

Title: _____

Address: _____

Telephone: _____

License Number: _____

Tax ID or Soc. Sec. # _____

Attachments:

- 1 – Work Write-up
- 2 – Standard Contract Language
- 3 – Notice to Owner

STANDARD CONTRACT LANGUAGE:
ALL CONTRACTS AND SUBCONTRACTS

1. The Civil Rights, HCD, and Age Discrimination Acts Assurances:
During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.
2. Rehabilitation Act of 1973 and the “504 Coordinator”
The Grantee further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Grantees with 15 or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the “504 Coordinator”.
3. The Training, Employment and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:
 - a) The grant activity to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR 135.34(a)(2).
 - b) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - c) The Grantee will include these Section 3 clauses in every contract and subcontract for Work in connection with the grant activity and will, at the direction of the State, take appropriate action pursuant to the contract or subcontract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - d) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the project, binding upon the Grantee, its successors and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

4. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more

The Grantee hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Grantee furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

5. State Nondiscrimination Clause:

a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40) marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Housing Act (Government Code, Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Regulations, are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

6. Labor Standards –Federal Labor Standards Provisions

The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

Davis-Bacon Act (40 USC 276a-276a-5) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of Federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.

Copeland “Anti-Kickback” Act (47 USC 276(c)) requires that workers be paid at least once a week without any deductions or rebates except permissible deductions.

Contract Work Hours and Safety Standards Act – CWHSSA (40USC 327-333) requires that workers receive “overtime” compensation at a rate of 1-1/2 times their regular hourly wage after they have worked 40 hours in one week.

Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

NOTICE TO OWNER

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

- (1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.
- (2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.
- (3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property; therefore, you need to protect yourself. This will help to insure that all person due are actually paid.
- (4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family

residence or a duplex owned by the individuals, the person signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

Read and acknowledged:

Signature

Dated

Signature

Dated

**ATTACHMENT K
MAMMOTH LAKES HOUSING
CONSTRUCTION PAYMENT REQUEST #**

Date _____

Participant _____ Project _____ Job # _____

Project Address _____

Total Contract Amount \$ _____ Payment Amount \$ _____

Contractor: _____ Construction Supervisor: _____

Items Completed:

I request payment for work in progress on the above property. I certify that the work itemized above has been completed as of this date.

Contractor's Signature

Date

NOTE: Ten percent (10%) of the total contract amount (including all change orders) will be retained by Mammoth Lakes Housing until 35 days after Notice of Completion is recorded.

The items listed above have been completed satisfactorily. _____

Please release payment to Contractor as requested (or amended). OWNER'S SIGNATURE

DATE

APPROVED FOR PAYMENT:

MAMMOTH LAKES HOUSING

DATE

Mail

Pick-up

NOTES:

Distribution: **WHITE:**Mammoth Lakes Housing **YELLOW:** Owner

PINK: Contractor

GOLDENROD: Supervisor



OWNER-INVESTOR HOUSING REHABILITATION PROGRAM GUIDELINES

County of Mono, California



CDBG APPROVED **DATE**

**MONO COUNTY
HOUSING REHABILITATION PROGRAM GUIDELINES**

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MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

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MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

I. GENERAL INTRODUCTION

The County of Mono hereinafter referred to as the County, has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer a CDBG-funded Housing Rehabilitation Program. Mammoth Lakes Housing, Inc. (MLH) as the Subrecipient Program Operator, will administer the Housing Rehabilitation Program described herein, for the County.

The Rehabilitation Program is designed to provide assistance to eligible owner-investors in updating homes and rental units, attending to deferred maintenance, and addressing energy efficiency. Eligible housing units must be located within the Program’s Targeted Area. The Rehabilitation Program provides this assistance in the form of deferred payment “silent” loans, below market interest rate loans, and grants.

Mono County completed a Housing Needs Assessment in 2017. According to the study approximately 39 percent of all housing units in the unincorporated area were built more than 30 years ago, with 21 percent built more than 40 years ago, and 13 percent built more than 50 years ago. These homes represent the maximum potential housing population in need of rehabilitation. While considering low inventory and high demand giving less incentive to update units, as well as the recent recession and severe weather conditions, many are in need of repairs. According to the report, approximately 445 renter occupied homes are in “fair” or “poor” condition and 156 owner occupied homes.

During the analysis, those with homes in fair or poor condition were asked to explain the types of repairs needed. 88 percent reported the need for repairs that they, or their landlord, have not yet made. Nearly 50 percent of those with homes in poor or fair condition need weatherization and two in five need window repairs/replacement. Heating, plumbing, electrical and appliances are all top repairs needed by at least one in five of these residents.

II. DEFINITIONS

Area Median Income: The midpoint in the family-income range for a metropolitan statistical area or for the non-metro parts of a state. The figure often is used as a basis to stratify incomes into low, moderate and upper ranges. Area Median Income is also adjusted for family size. See Attachment A for more information about qualifying incomes.

Below Market Interest Rate Loan: An amortized loan with a below market rate interest rate, secured by a deed of trust, with a fixed maximum term. Payments begin immediately. There is no prepayment penalty.

Deferred Payment Loan: A loan under which no payments are due until the property has transferred ownership, the primary loan is refinanced, or there is default on either loan.

Grant: A grant is an amount of money granted to an eligible household for qualifying rehabilitation which is not required to be repaid.

Household Income: The annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine Rehabilitation Program eligibility. For those types of income counted, gross amounts (before any deductions have been taken) are used; and the types of income that are not considered would be income of minors or live-in aides. Certain other household members living apart from the household also require special consideration. The household’s projected ability to pay must be used, rather than past earnings, when calculating income. Household income may include all amounts, monetary or not, which:

- 1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- 2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- 3) Derived (during the 12-month period) from assets to which any member of the

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

family has access.

For more information, please see Attachment A: 24 CFR Part 5 Annual Income Inclusions and Exclusions.

Housing Quality Standards (HQS): A basic set of performance requirements defined by the Department of Housing and Urban Development. See Attachment C.

Owner Builder: An owner-builder is defined as a person who constructs or renovates a domestic building on his or her own land, who is not in the business of building. Please consult the Mono County Building Division at the outset to determine the requirements.

Mono County Building Division
Mammoth Lakes Office, 760-924-1823
Bridgeport Office, 760-932-5420

Owner-investor: An owner-investor is an owner of a property that is for rent for profit. The owner-investor does not need to meet the income restriction requirements of the program; however, the tenants of the property do.

Owner Occupant: An owner-occupant is the primary owner of a property which is also their primary residence.

Targeted Income Group (TIG): All CDBG funds must benefit low and moderate income households. Low and moderate is defined as below 80% of the Area Median Income (p.12).

Targeted Area: The area that includes the unincorporated area of Mono County.

Tenant: An individual who rents from an owner-investor and meets the income restriction requirements. The household must earn less than 80% of the area median income adjusted for household size in order for the owner-investor to qualify for the Rehabilitation Program.

III. APPLICANT ELIGIBILITY

A. Conflict of Interest

No member of the governing body of the locality and no other official, employee, or agent of the Mono County government who exercises policy, decision-making functions, or responsibilities in connection with the planning and implementation of the program shall directly or indirectly be eligible for this program, unless the application for assistance has been reviewed and approved according to applicable California Department of Housing and Community Development (HCD) guidelines. This ineligibility shall continue for one year after an individual's relationship with the County ends.

A contractor with a vested interest in the property cannot bid on a rehabilitation job. Such a contractor may act as owner/builder, subject to standard construction procedures. Owner/builders are reimbursed for materials purchased which are verified by invoice/receipt and used on the job. Reimbursement occurs after the installation is verified by the Construction Supervisor to be part of the scope of work. Owner/builders are not reimbursed for labor. Mono County reserves the right to determine if the owner is capable of owner/builder rehabilitation work.

B. Occupancy

No unit to be rehabilitated will be eligible if it is currently occupied by an HCD ineligible household. Rental households occupying such units will be allowed to remain in the units. To prevent owners from evicting ineligible tenants before applying for the program, the owner must certify that no tenant has been forced to move without cause during the previous six months.

C. Temporary Relocation

Tenants will be informed of their eligibility for temporary relocation benefits if occupancy during rehabilitation

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

constitutes a danger to health and safety of tenant or public danger or is otherwise undesirable because of the nature of the project. Relocated tenants will receive increased housing costs, payment for moving and related expenses and appropriate advisory services, as detailed in the Mono County Residential Anti-displacement and Relocation Assistance Plan.

D. Fair Housing

This program will be implemented in ways consistent with Mono County's commitment to Fair Housing. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Development Block Grant (CDBG) funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (children), physical or mental disability, sexual orientation, or other arbitrary cause.

IV. PROPERTY ELIGIBILITY

A. Location

In order to qualify for rehabilitation funds, units must be located within the targeted area.

B. Rehabilitation Standards

All repair work will meet Uniform Building Code standards. The priority will be the elimination of health and safety hazards. See Section V below for other eligible rehabilitation activities.

C. Property Improvements

All improvements must be physically attached to the property and permanent in nature. General property improvements should be limited to 15% of the rehabilitation loan amount. Luxury items are not permitted.

D. Lead-Based Paint

Program participants rehabilitating homes constructed prior to January 1, 1978 must be provided with the proper disclosure notification concerning lead-based paint (LBP) hazards. Whenever pre-1978 houses are rehabilitated under CDBG, please refer to Attachment D, CDBG Lead-Based Paint Requirements, for guidance. The costs associated with meeting these requirements are eligible to be paid for with CDBG funds, and should be considered during program design.

V. ELIGIBLE IMPROVEMENTS

Rehabilitation needs will be addressed in the following priority:

- 1. Health and Safety:** Examples include correcting plumbing, electrical, structural, mechanical and roof deficiencies, modifications for handicap accessibility, room additions to resolve overcrowding and any other Housing Quality Standards (HQS) items (see Attachment C). All units shall have working smoke detectors and carbon monoxide detectors. Overcrowded conditions will be considered to exist when parents and children must share a bedroom, when children of the opposite sex must share a bedroom, and when a disabled person is required to share a room. A bathroom addition may be considered when five or more persons occupy a unit with a single bathroom.
- 2. Converting to Current Uniform Building Code (UBC) and Other Standards:** All work that may bring the property into compliance with the Mono County, California Code, the Uniform Building Code, or other code requirements is also eligible. Examples include moving bathroom access to hallways or off of kitchen, stairs, and porch upgrades. Also, paving driveways, creating covered parking, and other site work.
- 3. Energy Conservation:** Examples include insulation, reducing air infiltration through window and door replacement, weather-stripping and caulking, and replacing inefficient water heaters, refrigerators, clothes dryers, ovens, low flow water fixtures, and furnaces. Also the replacement of wood stoves not in compliance with the Environmental Protection Agency guidelines.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

4. **Extension of Useful Life:** Examples include repairing siding and sheet-rock, painting, new flooring, new cabinets, new interior doors, gutters, and foundation upgrades and repairs.
5. **General Property Improvements:** Only general property improvements that enhance the overall exterior appearance of the property will be allowed under this program. Examples include demolition of any unsightly structures, removal of debris, and repairing or replacing of fencing, carports and garages. A new garage or carport may be constructed if the property does not contain any sheltered parking. The conversion of a carport to a garage is also eligible. However, not more than fifteen percent (15%) of the rehabilitation loan may be used for general property improvements.

VI. OWNER INVESTOR

A. Eligible Individuals & Income Requirements

Owner-investor: There are no restrictions on the income of the owner-investor unless the owner-investor is a member of the Targeted Income Group (TIG) and is interested in qualifying for a Deferred Payment Loan.

Tenant: If a rental is currently occupied, the tenant's household income must be equal to, or less than, the applicable HCD income guidelines. Tenant will be asked to cooperate by providing income documentation.

B. Financing Options

i. Loan Amount

- An owner-investor may qualify for the full cost of the rehabilitation work needed to comply with Uniform Building Code standards. Maximum assistance from CDBG funds will be **\$75,000**. Housing and debt ratios are considered since the funding provided will create an additional monthly financial obligation. Two underwriting variables to consider are the loan-to-value ratio (does the property constitute sufficient value compared to the size of the loan the borrower is requesting to adequately secure the debt) and the debt-to-income ratio (the ability of the borrower to repay the debt). Total indebtedness against property will not exceed 100 percent of after rehabilitation value. Rehabilitation costs for CDBG funded jobs may be supplemented with personal financing or with other sources of leverage.

ii. Maximum Loan-to-Value

- The maximum encumbrance will be limited to 100% of the property's after-rehabilitated value.

iii. Types of Financing & Terms

- Below Market Interest Rate (BMIR) amortized loan at 0% interest, secured by a deed of trust and with a maximum term of 10 years, for a maximum of up to \$75,000. Payments begin immediately. The loan term may not extend beyond the Rental Limitation associated with the amount of funds borrowed (see Section VII below).
- If the owner-investor is a member of the Targeted Income Group, they may qualify for a Deferred Payment Loan upon agreement with the standard investor owner restrictions including a Maintenance Agreement and a Rent Limitation Agreement.

C. Residency Requirements

If an owner-investor sells or transfers title of the rehabilitated property for any reason, the loan is due and

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

payable.

An owner-investor may convert a rental property to his or her personal residence if all conditions below exist:

- He or she can prove that the previous tenant was not evicted without cause.
- He or she is income eligible.
- He or she requests approval from the County.

If an owner-investor converts a rental property, rehabilitated with CDBG funds, to his or her personal residence, but he or she is not income eligible, the loan is due and payable.

If an owner wants to convert the rehabilitated property to any commercial or non-residential use, the loan is due and payable.

D. Rent Limitation Agreement (RLA)

An owner-investor who elects to rehabilitate a rental unit with CDBG financing must sign an RLA, which will be recorded. This agreement will specify:

In no instance shall rents exceed the U.S. Department of Housing and Urban Development (HUD) Fair Market Rent (FMR) schedule while the RLA is in effect.

i. Terms

If BMIR financing is utilized, adherence to the following rent limitations from the date of Notice of Completion of construction shall apply.

Rent Limitation Requirements for Owner-investors	
Amount of loan financed with BMIR	Length of Rent Restriction Requirement
≤ \$37,500	5 years
> \$37,500	10 years

ii. Monitoring

Owner-investors will be required to submit to the Program Operator between May 1 and July 31 of each year for the term of the loan:

- Proof of occupancy in the form of a copy of a current utility bill for each tenant;
- Proof of income per Attachment A for each tenant.

iii. Compliance

Failure to comply with these terms and conditions will result in the loan becoming due and payable. If necessary, foreclosure proceedings will be instituted.

iv. Base Rent -- Vacant Unit

If the house is vacant, rent charges shall not exceed 30 percent of 80 percent of Mono County's median income for the appropriate household size in that unit. Owner-investor shall affirmatively

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seek TIG households by contacting the local housing authority. Where such contact does not result in eligible TIG tenants, the owner-investor shall contact Mammoth Lakes Housing, Inc. for guidance.

v. *Base Rent -- Occupied Unit*

If the house is occupied, rent charges shall not exceed 30 percent of the existing tenants' household income; or, where, before rehabilitation, rents already exceed 30 percent of the existing tenants' income, no rent increases shall be allowed which provide for rents plus utilities over 30 percent of the tenants' income.

vi. *Lead-Based Paint*

Program participants, including tenants, rehabilitating homes constructed prior to January 1, 1978 must be provided with the proper disclosure notification concerning lead-based paint (LBP) hazards. Whenever pre-1978 houses are rehabilitated under CDBG, please refer to Attachment D, Lead-Based Paint Requirements for guidance. The costs associated with meeting these requirements are eligible to be paid for with CDBG funds, and should be considered during program design

vii. *Maintenance Agreement*

As specified in the Rehabilitation Loan Agreement, an owner-investor who participates in the program must maintain the property at post-rehabilitation conditions for a minimum of five years. Should the property not be maintained accordingly, the loan will become due and payable and if necessary, foreclosure proceedings will be initiated.

VII. RECEIVING LOAN PAYMENTS

Homebuyer Program Loan payments will be made to:

Mono County	Physical Location
Controller's Office	Bridgeport Courthouse Annex II
PO Box 556	25 Bryant Street
Bridgeport, CA 93517	Bridgeport

The Rehabilitation Program will be the recipient of loan payments or recapture funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the CDBG Program Income Account, as required by HCD. The Rehabilitation Program Lender will accept loan payments from borrowers paying BMIR loans, prepaying deferred loans, and from borrowers making payments in full upon sale or transfer of the property. All loan payments are payable to the Sponsor.

VIII. DEFAULT AND FORECLOSURE

If an owner defaults on a loan, and foreclosure procedures are instituted, they shall be carried out according to the policies adopted in the Mono County Rehabilitation Loan Policies and Procedures (Attachment B).

IX. INSURANCE

Fire Insurance

The applicant shall maintain fire insurance on the property for the duration of the loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify the County as Loss Payee for the amount of the loan(s). A binder shall be provided to the County.

In the event the applicant fails to make the fire insurance premium payments in a timely fashion, the County at its

MONO COUNTY

HOUSING REHABILITATION PROGRAM GUIDELINES

option, may make such payments for a period not to exceed 60 days. The County may, in its discretion and upon the showing of special circumstances, make such premium payments for a longer period of time. Should the County make any payments, it may, in its sole discretion, add such payments to the principal amount that the applicant is obligated to repay the County under this program.

Flood Insurance

In areas designated by HUD as flood prone, the owner is required to maintain flood insurance in an amount adequate to secure the Rehabilitation Loan. This policy must designate the County as Loss Payee. The premium may be paid by the Rehabilitation Loan for one year.

X. LOAN OR GRANT APPROVAL

All loans and grants must be approved by the Finance Director, County Administrative Officer, or his/her designees. In order to obtain CDBG financing, applicants must meet all property and eligibility guidelines in effect at the time of loan approval. Applicants will be provided written notification of approval or denial.

XI. REPAIR CALLBACKS

In the event that a contractor must be called back to make corrections on rehabilitation work items that are not covered by the one year warranty, the County has the option to cover the costs through the current CDBG construction budget.

XII. PROGRAM COMPLAINT AND APPEAL PROCEDURE

Complaints concerning the CDBG Program should be made in writing and filed with the County. The County will then schedule a meeting with the CDBG Loan Review Committee. Their written response will be made within fifteen (15) working days. If the applicant is not satisfied with the committee's decision, a request for an appeal may be filed with the Board of Supervisors. Final appeal may be filed in writing with HCD within one year after denial or the filing of the Project Notice of Completion.

XIII. GRIEVANCES BETWEEN PARTICIPANTS AND CONSTRUCTION CONTRACTOR

Contracts signed by the contractor and the participant include the following clause, which provides a procedure for resolution of grievances:

Any controversy arising out of or relating to this Contract, or the breach thereof, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order who shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party prevailing in any arbitration proceeding shall be entitled to recover from the other all attorney's fees and costs of arbitration.

XIV. CONTRACTING PROCEDURES

- All housing rehabilitation work must be carried out using the CDBG adopted housing rehabilitation guidelines.
- The County will prepare, advertise the bid package and assist the homeowner in negotiating the contract.
- The homeowner will select the contractor.
- All contractors must be checked and cleared with HUD'S federal debarred list of contractors.
- All contractors must be actively licensed and bonded with the State of California.

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- All contractors must have public liability insurance to Mono County's required limits, Workmen's Compensation Insurance, unemployment and disability insurance.
- All contractors must comply with CDBG federal and state regulations.
- A Notice of Completion must be recorded with the County Recorder.

XV. SWEAT EQUITY

Participants who wish to perform sweat equity will sign a written commitment itemizing the work they will perform, a time schedule for completion and a dollar value of the contribution.

Owners that contribute sweat equity that involves painting will not participate in activities that include the abatement or mitigation of lead paint hazards without first being trained on Safe Work Practices as required by HUD and provide documentation of such in the project file.

XVI. AMENDMENTS

Amendments to these guidelines may be made by the County through a public hearing process and submitted to HCD for approval.

XVII. EXCEPTIONS

Exceptions to these guidelines will require County Administrative Officer and HCD approval.

XVIII. HUD INCOME LIMITS ADJUSTED FOR FAMILY SIZE FOR MONO COUNTY

2017 Mono County 80% Area Median Income (AMI) Adjusted for Household Size <i>*Eligible owner-occupants/tenants cannot earn more than these limits</i> <i>Effective June 15, 2017</i>	
Household Size	80% AMI
1 person	\$42,500
2 person	\$48,550
3 person	\$54,600
4 person	\$60,650
5 person	\$65,550
6 person	\$70,400
7 person	\$75,250
8 person	\$80,100

XIX. ATTACHMENTS

The following documents are attached and form part of these guidelines:

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

- **ATTACHMENT A:** 24 CFR Part 5 Annual Income Inclusions and Exclusions
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ATTACHMENT A:

24 CFR Part 5 Annual Income Inclusions and Exclusions for Federal Programs

As of May 27, 2010

CODE OF FEDERAL REGULATIONS

Title 24: Housing and Urban Development

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart F—Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

Source: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

- (a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;
- (b) Determining payments by and utility reimbursements to families assisted in these programs;
- (c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:
 - (1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;
 - (2) Owner selection preferences; and
 - (3) Owner reexamination of family income and composition;
- (d) Determining adjusted income, as provided in §5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these

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programs; and

- (e) Determining earned income disregard for persons with disabilities, as provided in §5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

[66 FR 6222, Jan. 19, 2001]

§ 5.603 Definitions.

As used in this subpart:

- (a) *Terms found elsewhere in part 5* —

- (1) *Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible entity* and *Section 8* are defined in §5.100.
- (2) *Subpart D.* The terms “disabled family”, “elderly family”, “family”, “live-in aide”, and “person with disabilities” are defined in §5.403.

- (b) The following terms shall have the meanings set forth below:

Adjusted income: See §5.611.

Annual income: See §5.609.

Child care expenses: Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses: Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Economic self-sufficiency program: Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low-income family: A family whose annual income does not exceed 30 percent of the median-income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD

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finds that such variations are necessary because of unusually high or low family incomes.

Full-time student: A person who is attending school or vocational training on a full-time basis.

Imputed welfare income: See §5.615.

Low-income family: A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses: Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income: One twelfth of adjusted income.

Monthly income: One twelfth of annual income.

Net family assets:

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under §5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in part 891 of this title.

Responsible entity: For §5.611, in addition to the definition of "responsible entity" in §5.100, and for §5.617, in addition to only that part of the definition of "responsible entity" in §5.100 which addresses the Section 8 program covered by §5.617 (public housing is not covered by §5.617), "responsible entity" means:

- (1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

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- (2) For the Rent Supplement Payments Program, the owner of the multifamily project;
- (3) For the Rental Assistance Payments Program, the owner of the Section 236 project;
- (4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable “State” or “unit of general local government” or “nonprofit organization” as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;
- (5) For the Shelter Plus Care Program, the “Recipient” as defined in 24 CFR 582.5;
- (6) For the Supportive Housing Program, the “recipient” as defined in 24 CFR 583.5;
- (7) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;
- (8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the “Borrower” as defined in 24 CFR 891.505; and
- (9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “owner” as defined in 24 CFR 891.305.

Tenant rent: The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See §5.613.

Utility allowance: If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement: The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family: A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Welfare assistance: Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

Work activities: See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 6223, Jan. 19, 2001; 67 FR 47432, July 18, 2002]

Family Income

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§ 5.609 Annual income.

- (a) Annual income means all amounts, monetary or not, which:
- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
 - (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
 - (3) Which are not specifically excluded in paragraph (c) of this section.
 - (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
- (b) Annual income includes, but is not limited to:
- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
 - (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
 - (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
 - (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
 - (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
 - (6) Welfare assistance payments: (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.(ii) If the welfare assistance payment includes an amount specifically designated for shelter

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and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).
- (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.
- (c) Annual income does not include the following:
- (1) Income from employment of children (including foster children) under the age of 18 years;
 - (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
 - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
 - (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
 - (5) Income of a live-in aide, as defined in §5.403;
 - (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
 - (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - (8) (i) Amounts received under training programs funded by HUD;
 - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

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- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
 - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
 - (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
 - (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
 - (12) Adoption assistance payments in excess of \$480 per adopted child;
 - (13) [Reserved]
 - (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
 - (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
 - (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
 - (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.
- (d) Annualization of income: If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

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[61 FR 54498, Oct, 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 67 FR 47432, July 18, 2002; 70 FR 77743, Dec. 30, 2005]

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in §5.100 and §5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

- (a) Mandatory deductions: In determining adjusted income, the responsible entity must deduct the following amounts from annual income:
 - (1) \$480 for each dependent;
 - (2) \$400 for any elderly family or disabled family;
 - (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family; and
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
 - (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.
- (b) Additional deductions:
 - (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.
 - (2) For the HUD programs listed in §5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

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ATTACHMENT B:

Mono County Rehabilitation Loan Servicing Policies and Procedures

Mono County, here after called "Lender," has adopted these policies and procedures in order to preserve its financial interest in properties, who's "Borrowers" have been assisted with public funds. The Lender will to the greatest extent possible follow these policies and procedures but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions which are associated with them.

The policies and procedures are broken down into the follow areas: 1) making required monthly payments or voluntary payments on a loan's principle and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) required Rent Limitation Agreement and monitoring of investor properties; 5) loans with annual occupancy restrictions and certifications; 6) required noticing and limitations on any changes in title or use of property; 7) required noticing and process for requesting a subordination during a refinance; 8) process of foreclosure in case of default on the loan.

1. Loan Repayments:

The Lender will collect monthly payments from those borrowers who are obligated to do so under Notes, which are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly date.

For Notes associated with deferred payment loans, the Lender may accept voluntary payments on the loan. Loan payments will be credited to the interest first and then to principal. The borrower may repay the loan balance at any time with no penalty.

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a second mortgage. If borrower fails to maintain the necessary insurance, the Lender may take out forced place insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower's new insurance.

When a property is located in a 100 year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance will be required at close of escrow. The lender may check the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes then the lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower's loan is in second position behind an existing first mortgage, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify the lender of initiation of a foreclosure action. The Lender will then have time to contact the Borrower and assist them in bringing the first loan current. The Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Lender is in a third position and receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

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4. Required Rent Limitation Agreement for Investor Properties:

All owner-investor properties which receive loans from the Lender will be required to enter into a rent limitation agreement which restricts the tenants and the rents on the property for a fixed period of time, depending on the public funds used. The rent limitation agreement will be recorded on title of the property and non-compliance with this agreement can lead to foreclosure action by the Lender. The rent limitation agreement will be monitored annually to ensure that low or very low-income households occupy the assisted investor units and that the rents charged to those households is affordable. In some cases the units must be inspected annually to ensure that they are up to minimum health and safety standards. At the end of the designated affordability period, the Lender will release the Borrower from the rent limitation agreement.

5. Annual Occupancy Restrictions and Certifications:

On some owner occupant loans the Lender may require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Other loans may have income and housing cost evaluations, which require a household to document that they are not able to make repayments, typically every five years. These loan terms are incorporated in the original note and deed of trust.

6. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original program terms and conditions such that it remains available as an affordable home for low income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Lender. Changes in title or occupancy must be in keeping with the objective of benefit to the Targeted Income Group (TIG) families.

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Lender's Loan Committee.

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on family size and household income, provided the heir is in the TIG. If the heir intends to occupy the property and is non-TIG, the balance of the loan is due and payable. If the heir intends to act as an owner-investor, the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Lender's Loan Committee.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner occupied to rental, the loan is due in full. If the Borrower or new owner-investor requests that the existing loan be assumed and agrees to the current Lender rates and terms for owner-investor properties and the rent limitation agreement, then the outstanding balance may be refinanced, subject to the review and approval of the Lender's Loan Committee.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Lender allow for a partial conversion where some of the residence is used for a business but the family still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

7. Requests for Subordinations:

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When a Borrower wishes to refinance the property, they must request a subordination request to the Lender. The Lender will only subordinate their loan when there is no "cash out" as part of the refinance. Cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third party debt pay offs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the housing cost of the family with a lower interest rate and the total indebtedness on the property should not exceed the current market value.

Upon receiving the proper documentation from the refinance agency, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Lender.

8. Process for Loan Foreclosure:

Upon any condition of loan default: 1) nonpayment; 2) lack of insurance or property tax payment; 3) violation of rent limitation agreement; 4) change in title or use without approval; 5) default on senior loans, the Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount, or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can provide future payments. If this is the case then the Lender may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien may be eliminated due to insufficient sales proceeds.

9. Lender As Senior Lien Holder:

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- A. Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- B. Can the Borrower refinance with a private lender and pay off the Lender?

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- C. Can the Borrower sell the property and pay off the Lender?
- D. Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- E. Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise the Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

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ATTACHMENT C:

HUD Housing Quality Standards (HQS)

The Department of Housing and Urban Development (HUD) established Section 8 housing choice vouchers so that low-income individuals could find quality housing in the open market. To make sure that any unit rented to a tenant with a housing choice voucher is up to standard, a housing inspection is conducted on the unit by the local Public Housing Authority.

HUD has established certain Housing Quality Standards that are the basis for these inspections. These standards ensure that all units that are rented to tenants with housing choice vouchers meet certain requirements.

Thirteen performance requirements encompass the Housing Quality Standards. These requirements include:

1. Sanitary Facilities
2. Food Preparation and Refuse Disposal
3. Space and Security
4. Thermal Environment
5. Illumination and Electricity
6. Structure and Materials
7. Interior Air Quality
8. Water Supply
9. Lead-Based Paint
10. Access
11. Site and Neighborhood
12. Sanitary Conditions
13. Smoke Detectors

These performance requirements are guidelines for home inspectors. The Housing Quality Standards also include acceptability standards for each performance requirement which can help an inspector determine if an item meets HUD's standards. The inspectors must use their own judgment and discretion to interpret these rules in certain cases.

Here are some sample criteria for each performance requirement to give you an idea of what the inspector is looking for. For the complete requirements and standards, please refer to Chapter 10: Housing Quality Standards, of HUD's Housing Choice Voucher Guidebook.

1. Sanitary Facilities

Sample Criteria:

- The bathroom must be located in a private room within the residence.
- The bathroom must contain a flushing toilet, a shower or tub and a sink.
- The shower or tub and the sink must have functioning hot and cold water.

2. Food Preparation and Refuse Disposal

Sample Criteria:

- The unit must have an oven and a stove or a range. A microwave oven can be substituted.
- The unit must have a kitchen sink with hot and cold water and a proper sink trap.

3. Space and Security

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Sample Criteria:

- The unit must have a living room, a kitchen and a bathroom.
- Any doors or windows that are accessible from the outside must be able to be locked.

4. Thermal Environment

Sample Criteria:

- The heating system must safely provide heat to each room. The local PHA will determine what temperature is considered adequate during each month of the year.
- The cooling system must safely cool each room.

5. Illumination and Electricity

Sample Criteria:

- The living room and each bedroom must have at least one window.
- The kitchen must have at least one working outlet.
- The living room and each bedroom must have at least two working outlets.

6. Structure and Materials

Sample Criteria:

- All ceilings, walls and floors must not show any signs of bulging, buckling and must not contain large holes.
- The roof must be structurally sound.
- Handrails are required when there are four or more steps.

7. Interior Air Quality

Sample Criteria:

- Bathrooms must have a window that can be opened or must have other adequate ventilation.
- The unit must be free from dangerous pollutants, such as carbon monoxide.

8. Water Supply

Sample Criteria:

- The water supply must be free from contamination.
- Plumbing pipes and fixtures must be free from leaks.

9. Lead-Based Paint

Sample Criteria:

- Units constructed before 1978 must be free from lead-based paint hazards.
- There must be no chipping, cracking or peeling paint or other hazards.

10. Access

Sample Criteria:

- There must be two ways to exit the unit. A fire escape is considered an alternate means of exit.
- The fire escape or other emergency exit cannot be blocked.

11. Site and Neighborhood

Sample Criteria:

- There must not be excessive noise or trash accumulation in the neighborhood.
- There must not be an abnormal amount of air pollution.

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12. Sanitary Conditions

Sample Criteria:

- There must not be a rodent or vermin infestation.

13. Smoke Detectors

Sample Criteria:

- There must be at least one working smoke detector on each level of the unit, including the basement. Local codes may have stricter requirements, such as placing a smoke detector outside of each bedroom.
- All smoke detectors must be operational.

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ATTACHMENT D:

CDBG Grant Management Manual: CHAPTER 20

LEAD BASED PAINT REQUIREMENTS

[HTTP://WWW.HCD.CA.GOV/FA/CDBG/MANUAL/CHAPTER20.HTML](http://www.hcd.ca.gov/fa/cdbg/manual/chapter20.html)

A. INTRODUCTION

The purpose of this chapter is to provide information and guidelines on the Federal lead-based paint (LBP) regulations. Additional program related information is also located in the following chapters: Chapter 12 – Monitoring, Chapter 14 – Program Income, Chapter 16 – Housing Rehabilitation, and Chapter 17 -- Home Buyer Assistance.

HUD issued these regulations to protect adults and young children from LBP hazards in housing built prior to 1978 that is financially assisted or sold by the Federal government. Children six and under are particularly vulnerable since lead poisoning can cause significant injury, including permanent brain damage, reduced intelligence, and behavioral problems. A large percentage of children with lead poisoning are in low-income families living in older homes with heavy concentrations of LBP. The most common source of lead exposure is dust from deteriorated LBP and lead contaminated soil. Due to increased understanding of the harmful effects of lead exposure on children and adults, Federal LBP requirements have become more stringent.

B. GRANTEE RESPONSIBILITIES

All CDBG grantees are required to follow the Federal LBP regulations as listed in 24 CFR 35 in implementing their activities. Part J is for Housing Rehabilitation Programs, and part K is for Homebuyer Assistance Programs. Essentially, grantees are responsible to inform residents of the potentials of LBP hazards in their home, evaluate the degree of LBP hazards, mitigate these hazards, provide clearance on the rehabilitated areas affected by the LBP work, and provide all appropriate notices.

C. EFFECTIVE DATE –CDBG STATE PROGRAM

There have recently been two phases of reform in the LBP hazard regulations. Regulations regarding “working safely” with lead took effect on November 15, 1999. The second phase occurred when HUD published new regulations streamlining all LBP hazard requirements for CDBG grants. CDBG grants with award letters dated on or after September 15, 2000 are subject to the new regulations; however, implementation was delayed until January 10, 2002. Jurisdictions with an award letter prior to September 15, 2000 are not subject to the LBP regulations. Once a jurisdiction receives an award after September 15, 2000 for an activity subject to the LBP regulations, then all activities subject to LBP rules, including PI are subject to the LBP regulations.

Each set of regulations are in effect for houses and residences built prior to January 1, 1978 (As of January 1, 1978, LBP was banned nationwide for residential use). For the CDBG program, these new regulations largely apply to housing acquisition and rehabilitation of residences.

These new regulations may be found in Title 24, Part 35 of the Code of Federal Regulations (24 CFR 35) or on the Internet at www.access.gpo.gov/nara/cfr/waisidx_01/24cfr35_01.html

D. CRITICAL LAWS OR REGULATIONS PERTAINING TO LBP

If other Federal, State, tribal or local law, ordinances, codes or regulations are applicable to the CDBG

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activity, the more protective definition shall apply. Following are critical state and Federal laws and regulations pertaining to LBP hazards.

1) Federal

- 24 CFR Part 35 – Lead Based Paint Prevention in Certain Residential Structures (HUD)
- Toxic Substances Control Act Section 406 - Requirements of Hazard Education Before Renovation for Target Housing
- 40 CFR Part 745 – Identification of Dangerous Levels of Lead (EPA)

2) State

- Title 17 Sec. 35000 – Accreditation, Certification, and Work Practices for LBP and Lead Hazards (DHS)
- Cal/OSHA Title 8 Sec. 1532.1 – Construction Safety Orders – Lead
- Cal/OSHA Title 8 Sec. 5194 – Hazardous Communication
- Civil Code 1102-1102.16 –Real Estate Lead Hazard Disclosure Requirements (HUD also has its own disclosure requirements. See next section.)
- Proposition 65 – Safe Drinking Water and Toxic Enforcement Act of 1986

3) Local

- Check with your city or county for applicable local codes.

E. SIGNIFICANT EXEMPTIONS (24 CFR 35.115)

HUD's LBP requirements do not apply to:

- Dwellings completed on or after 1/1/78.
- Housing exclusively for the elderly or person with disabilities, unless a child under age six resides (100 days or longer) or is expected to reside there.
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks.
- Housing found by certified inspection to be free of LBP.
- Housing in which all LBP has been properly identified, removed, and cleared (This does not apply where enclosure or encapsulation has been used as a method of abatement).
- Unoccupied reconstruction housing that will remain vacant until it is demolished to the foundation.
- Non-residential property: Property or part of a property that will not be used for human residential habitation. Not exempt are common use areas, such as entryways, hallways, corridors, passageways, stairways or building exterior in a mixed-use building.
- Rehabilitation that does not disturb a painted surface.
- Emergency repair action, which are those needed to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage.
- Historical sites/dwellings may use interim controls instead of abatement, under certain conditions.

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For a complete list of exemptions see 24 CFR Part 35.115, referenced in the Appendix VI-A of this chapter.

F. WORKING SAFELY WITH LEAD (24 CFR 35.1350)

HUD's LBP regulations establish *safe work* practices which must be followed at all times. The exception to this rule is if the painted area to be affected falls within the de minimis levels. These are:

- 20 sq. ft. (2 sq. meters) on exterior surfaces;
- 2 sq. ft. (0.2 sq. meters) in any one interior room or space; or
- 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

The intent of work safe methods is to minimize the spread of leaded paint dust, paint chips, and debris. The following are the major provisions in the safe work practices regulations:

1) **Qualifications to Perform Safe Work Practices**

Workers must be trained in Safe Work Practices. For additional information on this training, contact: <http://www.leadlisting.org>.

2) **Occupant Protection**

The occupant and the environment must be protected from lead-contaminated or lead-containing materials during hazard reduction activities. The areas of concern are:

- No Occupants At Worksite: *Occupants shall not be permitted to enter the worksite during hazard reduction activities until after hazard reduction work has been completed and clearance, if required, has been achieved.*
- Protection of Occupants Belongings: *The dwelling and worksite shall be secured against unauthorized entry, and occupants' belongings shall be protected from contamination during hazard reduction activities by relocating or covering and sealing them.*
- Temporary Relocation: *Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible unit free of LBP hazards, except if:*
 - *Treatment will not disturb LBP, dust-lead hazards or soil lead hazards.*
 - *Interior: Treatment of the interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.*
 - *Building exterior: The windows, doors, ventilation intakes and other openings near the worksite are sealed during hazard control work and cleaned afterward; and a lead free entry is provided.*
 - *Treatment will be completed within five calendar days; the work area is sealed; the area within 10 feet of the containment area is cleared of debris at the end of the day; occupants*

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have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health, or environmental hazards.

3) Worksite Preparation and Containment

The worksite for lead hazard reduction activities must be prepared to prevent the release of leaded dust and debris.

Workers must use practices that minimize the spread of leaded dust, paint chips, soil, and debris.

Warning signs are required at each entry to a room where lead hazard reduction activities are conducted when occupants are present, at the main and secondary entryways to a building from which occupants have been relocated, and at exterior worksites at a size and type readable from 20 feet (six meters) from the edge of the worksite. Signs need to be in the occupants' primary language to the extent practicable.

4) Prohibited Methods

The methods identified below may not be used at any time for work on surfaces known or suspected to contain LBP:

- Open flame burning or torching.
- Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- Abrasive blasting or sandblasting without HEPA local exhaust control.
- Heat guns operating above 1,100 degrees Fahrenheit, or those that operate high enough to char the paint.
- Dry sanding or dry scraping.
- Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations.

5) Worksite Cleanup

Good cleanup is critical to passing clearance and leaving the unit safe for habitation. The worksite shall be cleaned using methods, products, and devices that are successful in cleaning lead-contaminated dust, such as vacuum cleaners with HEPA filters or equivalent equipment and household or lead specific detergents or equivalent products.

6) Safe Work Practice Exemptions

- *Safe work practices are not required if paint has been tested and found to be lead-free.*
- *Safe work practices are not required in houses completed after 1978.*

7) Clearance (24 CFR 35.1340)

Clearance is performed to determine whether the lead hazard reduction process is complete and that no lead-dust or soil hazards remain in the areas of concern. The clearance report requires DHS Form 8552. A clearance examination involves a visual assessment, dust, and soil testing to determine if the unit is safe for occupancy. A certified inspector/risk assessor must perform clearance.

The clearance examiner must prepare a clearance report in accordance with (24 CFR Part 35.1340) if lead hazard reduction activities other than abatement are performed. Use DHS form 8552. If abatement is conducted, a certified supervisor or project designer must prepare an abatement report in accordance with 40 CFR 745.227(e)(10). Essentially, this requires DHS form

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8551 (that was previously filled out) to be attached to the clearance form (DHS 8552). The clearance notice must note each failed clearance.

G. LEAD HAZARD EVALUATION (24 CFR 35.110 and 35.1320)

Lead Hazard Evaluation methods involve an examination of a dwelling to check for lead hazards for every activity. Evaluation methods include risk assessments, lead hazard screenings, visual assessments, presumption of LBP, and paint testing. In California, the Department of Health Services certifies workers/supervisors/inspectors/risk assessors. Refer to the Department's website,

www.dhs.ca.gov/childlead/ for more information. Below is a brief description of each evaluation method.

- **Risk Assessment:** Risk Assessment is a comprehensive investigation of a dwelling to identify LBP hazards that includes paint testing, dust and soil sampling, and a visual evaluation. Risk assessment results are summarized in a written report with recommendations for actions. Risk assessments are conducted by inspectors/risk assessors certified by the Department of Health Services.
- **Lead Hazard Screening:** Lead Hazard Screening is similar to a risk assessment. While the sampling is less extensive, the requirements are more stringent. If LBP hazards are detected, a full risk assessment must then be conducted. Lead hazard screens are conducted by certified risk assessors.
- **Visual Assessment:** A Visual Assessment of deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipped paint. A visual assessment does not require notification of lead hazard evaluation since the assessment does not evaluate lead-based paint and/or lead hazards. However, if hazards are discovered and addressed, the contractor must still meet the hazard reduction activity notification requirement. Visual assessments are conducted those who have taken the HUD online test at: <http://www.hud.gov/offices/lead/training>.
- **Presumption:** Presumption is an administrative decision, and no formal training is required. It makes a determination of LBP and/or LBP hazards based on non-testing information and is an alternative to performing lead hazard evaluation activities. In some cases, by presuming LBP and/or LBP hazards, hazard evaluations may not be required, but contractors must still conduct lead hazard reduction activities as required.
- **Paint Testing:** Paint Testing entails testing painted surfaces to determine if they contain LBP using methods such as an x-ray fluorescence (XRF) analyzer or laboratory analysis. Paint testing must be conducted by certified inspectors/risk assessors.

H. LEAD HAZARD REDUCTION METHODS (24 CFR 35.1330, 35.1325, and 35.1335)

Lead hazard reduction methods refer to specific types of treatment to address LBP hazards. Nothing precludes contractors from conducting additional lead hazard reduction methods beyond the minimum established for each activity. Lead hazard reduction methods include:

1) **Interim Controls**

Interim controls temporarily reduce exposure to LBP hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education programs. A detailed description of interim controls are in 24 CFR 35.1330. Interim control

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methods include, but are not limited to:

- Paint Stabilization: Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.
- Treatment For Friction And Impact Surfaces: If LBP is found and exceeds acceptable levels or is presumed, the conditions creating friction or impact with surfaces with LBP such as those that rub, bind, or crush must be corrected. Examples of this work include hanging/binding doors, installing doorstops, or reworking windows.
- Safe Work Practices: All interim controls shall incorporate the use of safe work practices.
- Treatment For Chewable Surfaces: If a child under age six has chewed surfaces known to contain LBP or if LBP is presumed, these surfaces must be enclosed or coated, so they are impenetrable.
- Lead-Contaminated Dust Control: All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Carpeting must be vacuumed, or rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums.
- Lead-Contaminated Soil Control: If soil is lead-contaminated, interim controls that may be used include impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.

2) Standard Treatments (24 CFT 35.1335)

Under certain conditions, if LBP is presumed, then the standard treatment method is triggered. Standard treatments apply to all applicable surfaces, including soil, to control LBP hazards that may be present. These methods include:

- Paint Stabilization: All deteriorated paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting. Or abatement may be performed.
- Smooth and Cleanable Horizontal Surfaces: All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, windowsills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum.
- Correcting Dust-Generating Conditions: All conditions that generate lead-contaminated dust such as those that rub, bind, or crush surfaces with LBP must be corrected. Examples include re-hanging doors, installing doorstops, or reworking windows.
- Bare Residential Soil: Soil is addressed using interim control methods including impermanent surface covering such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.
- Safe Work Practices: All standard treatments shall incorporate the use of safe work practices.
- Clearance: A clearance examination shall be performed at the conclusion of lead hazard reduction activities.
- Qualifications: An individual performing standard treatments must meet the training and/or supervision requirements.

3) Abatement (24 CFR 35.1325)

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Abatement permanently (for at least 20 years) removes lead based paint and LBP hazards by a variety of measures, including removing LBP and its dust, encapsulating or enclosing the LBP, replacing components containing LBP, or removing or covering lead-contaminated soil. All abatement methods shall incorporate the use of safe work practices. Abatement shall then be conducted on all applicable surfaces, including soil, and completed when clearance is achieved.

4) **Qualifications To Perform Lead Hazard Reduction**

Paint Stabilization, Interim Controls, and Standard Treatments require certification as workers or supervisors.

Abatement must be conducted by certified workers and supervisors certified by California's Department of Health Services.

I. **REHABILITATION**

Requirements in the regulations for rehabilitation activities are found in 24 CFR Part 35, Subpart J. Rehabilitation activities require lead hazard evaluation and reduction activities be carried out for all projects constructed prior to 1978. Sections 6 through 11 of this chapter pertain directly to CDBG rehabilitation.

1) **Federally Rehabilitation Assistance Categories (24 CFR 35.930)**

a) **Rehabilitation Projects Less Than Or Equal To \$5000**

Rehabilitations of Residential property receiving an average of up to and including \$5,000 per unit in Rehabilitation Assistance are required to complete the following:

- i. Lead Hazard Evaluation: Paint testing must be conducted to identify lead based paint on all painted surfaces that will be disturbed or replaced.
- ii. The grantee may presume that LBP exists on all painted surfaces that will be disturbed or replaced and skip paint testing.
- iii. Lead Hazard Reduction: Grantees must repair all paint that will be disturbed during rehabilitation. If LBP is detected or assumed, safe work practices must be used during rehabilitation.
- iv. Noticing is required.
- v. Clearance is required only for the work area.

b) **Rehabilitation Projects: Over \$5,000 to \$25,000 Per Unit**

- i. There are two requirements for the Lead Hazard Evaluation:
 - Paint testing: Paint testing must be conducted to identify lead based paint on all painted surfaces that will be disturbed or replaced. *Interim controls are used on LBP hazards.*
 - Risk Assessment: A risk assessment must be conducted prior to rehabilitation to find LBP hazards in assisted units, in common areas that service those units, and on exterior surfaces.
- ii. There are four options in determining the hazards of LBP:

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- In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces to be disturbed or replaced and *use interim controls*. A risk assessment is still required.
 - In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces. The grantee must *perform standard treatments*. A risk assessment is not required.
 - When using interim controls, the grantee is permitted to conduct paint testing on all non-intact paint surfaces. If no LBP is detected, then no interim controls are required on that surface. A risk assessment is still required.
 - The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead levels that exceed interior lead dust standards, then a risk assessment must be conducted.
- iii. Lead Hazard Reduction: If LBP or LBP hazards are detected during the evaluations on interior surfaces in the dwelling units, and the common areas that service those units or on exterior surfaces to be disturbed by rehabilitation, interim controls must be implemented to reduce LBP hazards. See options above for exemptions.
- iv. Notice is required.
- v. Clearance is required.
- c) Rehabilitation Projects Over \$25,000 Per Unit
- i. There are two requirements for the Lead Hazard Evaluation:
- Paint testing must be conducted to identify lead based paint on deteriorated painted surfaces or surfaces that will be disturbed or replaced.
 - A risk assessment must be conducted prior to rehabilitation to find LBP hazards in assisted units, in common areas that service those units, and on exterior surfaces, or grantees may assume that LBP hazards exist.
- ii. There are three options in the Lead Hazard Evaluation:
- In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces to be disturbed or replaced and abate these surfaces.
 - In lieu of paint testing, the grantee is permitted to assume that LBP or LBP hazards are present on all painted surfaces. Abatement is required on these surfaces. In such cases, evaluation is not required.
 - The grantee is permitted to conduct a lead hazard screen instead of conducting a risk assessment. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates that lead is present, then a risk assessment must be conducted.

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iii. *Lead Hazard Reduction: If LBP hazards are detected during the evaluations on interior surfaces in the dwelling units and the common areas that service those units or on exterior surfaces, including soil, to be disturbed by rehabilitation, abatement must be completed to permanently reduce LBP hazards.*

If LBP hazards are detected on the exterior surfaces that are not disturbed by rehabilitation during the risk assessment, interim controls may be completed instead of abatement to reduce these hazards.

iv. *Noticing is required.*

v. *Clearance is required.*

2) **Calculating the Level of Federal Rehabilitation Assistance (24 Cfr 35.930)**

The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of Federal Rehabilitation Assistance (FRA) projected for each project. The FRA breaks up into three categories:

- FRA of up to and including \$5,000 per unit,
- FRA of more than \$5,000 per unit, up to and including \$25,000,
- FRA of more than \$25,000 per unit.

The FRA is determined by comparing the per unit rehabilitation *hard costs* and the overall per unit *Federal Assistance*. The lower of these calculations is used as the FRA amount.

Hard Costs: Rehabilitation hard costs are calculated using the actual costs associated with the physical development of a unit, regardless of the source of these funds. These do not include soft costs, such as administration, relocation, environmental review, and acquisition costs. Soft costs include financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting fees, appraisals, and architectural and engineering fees.

Federal Assistance: Federal Assistance is determined by tabulating all Federal funds provided to the project for housing assistance. This also includes funds from program income, but excludes funding such as low-income housing tax credit funds (LIHTC) or non-Federal Home Program match funds which are not consider housing assistance.

For determining which level is used in multiple family units to be rehabilitated, an average is used. See 24 CFR 35.915 and HUD's April 2001 Interpretive Guidance for specific details.

3) **Intent: Abatement, Rehabilitation Or Weatherization**

Pursuant to a joint letter from HUD and EPA, dated April 19, 2002, jurisdictions have an additional option when rehabilitating dwellings in which LBP may be present. This provision impacts dwellings below the \$25,000 Federal rehabilitation assistance category.

If a jurisdiction's "intent" is to rehabilitate or weatherize a dwelling without mitigating any LBP hazards, then it is not required to perform interim controls in *the area to be rehabilitated*. *Intent* is shown in the work write up. If only rehabilitation aspects are included in the write up, then the *intent* is to rehabilitate and not mitigate LBP hazards. However, "work safe" practices must still be used. If LBP mitigation measures are included in the work write up, then the *intent* is to mitigate LBP hazards, and all usual mitigation rules apply.

Additionally, if your intent is to abate LBP hazards, then you must follow the abatement worker rules as indicated in the LBP rehabilitation matrix, regardless of the hard cost level of your project.

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4) Construction Waste

According to a January 23, 2001 EPA Policy Guidance letter, #2001-02, "...all wastes generated from lead hazard control activities at residential properties are household wastes which are excluded from the hazardous waste requirements of the Resource Conservation and Recover Act. As a result, residential LBP waste may be discarded in a municipal solid waste landfill or combustor, but not dumped nor open-burned. Certain LBP waste (such as large quantities of concentrated waste—paint chips, dust, or sludge) from residential de-leading may be subject to more stringent State, local, and/or tribal requirements." As a result of this guidance, check with your local waste site to determine how they want to deal with the waste being generated from your LBP mitigation activities.

J. DISCLOSURES AND NOTICES (24 CFR 35.92 and 24 CFR 35.125)

1) Disclosures

Notification is required on all rehabilitation and first time homebuyer activities, regardless of the level of assistance.

- *Lead Hazard Information Pamphlet: Residents and purchasers of a residential property must receive a copy of the EPA/HUD/Consumer Product Safety Commission Lead Hazard Information Pamphlet, "How to Protect your Family from Lead in Your Home." Have the recipient acknowledge receipt of this pamphlet in writing and retain this acknowledgment in the rehabilitation files.*
- *Disclosure of LBP and Hazards: Property owners must provide purchasers and lessees with available information or knowledge regarding the presence of LBP and hazards prior to selling or leasing a residence. In the contract or lease, sellers and lessors of pre-1978 housing must include disclosure and acknowledgement language and a warning statement about the dangers of LBP. Sellers must allow purchasers 10 days to inspect the dwelling for LBP or lead based paint hazards. The appropriate contractual addendum on this waiting period must be part of the contract documents. See Matrices and Checklists Section in this chapter for sample language.*

2) Notices

- *Paint Testing, Lead Hazard Evaluation, Visual Assessment, or Presumption: Use DHS form 8552. When an evaluation results in findings of LBP hazards or if a presumption of LBP hazards is made, then contractors must provide to the residents and post notice no later than 15 days after this report has been received. These notices shall be posted for four weeks.*
- *Abatement: Use DHS form 8551, Abatement of Lead Hazards Notification in conjunction with DHS form 8552.*
- *Clearance: Use DHS form 8552. Notice of Lead Hazard Reduction Activity: When lead hazard reduction activities have been completed (clearance has been achieved), a contractor must provide to the residents or post a notice of these lead hazard reduction activities no later than 15 days after completion. The notices shall be updated if additional work is*

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required. Any failed clearances must be described in the notice. These notices shall be posted for four weeks.

- Availability of Notices: Notices of evaluation, presumption, and hazard reduction shall:
 - Be of a size and type easily read by occupants.
 - To the extent practicable, be made available upon request in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).
 - Be provided in the occupants' primary language or in the language of the occupants' contract or lease.
 - Be provided to the occupants by posting and maintaining it in centrally located common areas and distributing it to any dwelling unit, if necessary, because the head of household is a person with a known disability.
 - Be distributed to each occupied dwelling affected by the evaluation. If the notice is for a lead hazard in a common area that is used by those in the dwelling unit, the occupants of the dwelling unit shall also receive notice.

K. ACQUISITION AND SUPPORT SERVICES (24 CFR 35.1000)

The lead-based paint requirements for acquisition, leasing, support services or operations is found in 24 CFR Part 35, Subpart K.

1) Acquisition

These regulations are intended to provide assurances that the LBP paint in homes purchased with CDBG funds have been stabilized, and that the unit is "lead safe" when it is occupied by the assisted household. Key requirements for LBP in Homebuyer Assistance are LBP hazard evaluation, treatment, and clearance. The following is required to identify deteriorated paint in homes:

- Visual Assessment: An inspection of all interior painted surfaces, including common areas such as hallways, laundry rooms or garages, and exterior surfaces of the building in which the dwelling unit is located must be conducted to identify deteriorated paint. Notification is only required if LBP hazards are identified.
- Paint Stabilization: All deteriorated paint surfaces must be stabilized before the homebuyer moves into the home. If paint testing of a deteriorated surface reveals no LBP, then paint stabilization is not required on that surface.
- Safe Work Practices: The owner/contractor must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.
- Clearance: After the completion of work, the home must pass clearance. Clearance must happen before occupancy if the home is vacant or immediately after receipt of Federal assistance for a home currently occupied.

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- Costs: In order to provide maximum flexibility, the party responsible for paying for lead hazard evaluation and reduction in homebuyer programs depends upon program design and local requirements. Costs may be borne by the administering agency, the seller, the homebuyer, or a combination of the preceding.
- Notification: The notification process is the same as for rehabilitation activities.

2) Support Services and Operations

Support Services and Operations programs that assist in buying, renting, improving, operating or maintaining housing are covered by these regulations. Programs that provide services, such as medical care, education, or food service are not considered housing assistance and are not covered by the regulations. However, HUD recommends that efforts be made to assure that facilities providing these types of support services are lead-safe, if they are frequented by children less than 6 years of age.

3) Exemptions

If the housing assistance being provided is for less than 100 days, the assistance is exempt. For example, if a transitional housing unit that does not meet the definition of a zero-bedroom exemption, provides housing to several families for no more than 100 days, it is exempt from the provisions of Subpart K. The 100-day time limit applies to the dwelling, not the individuals or families.

L. RECORDKEEPING

Notices, evaluation, clearance and abatement reports must be kept at least three years and must be made available for Department review.

Records must be kept for at least three years, but it is recommended that lead-based paint records be kept indefinitely. The following records should be kept:

- Information on age of property, age of children living at property, existing information on Children's blood lead levels, existing information on lead-based paint.
- Inspection report or documentation of Visual Assessment.
- Disclosure statement.
- Clearance report.
- All notifications.
- Documentation of required certifications or training.
- Documentation indicating receipt of the pamphlet.

M. QUESTIONS

Q1. How does sweat equity come into play when a homeowner opts to paint the house as part of the rehabilitation? What is the homeowner's responsibility in minimizing LBP hazards?

A. The homeowner must receive training on and use work safe requirements, including containment, practices, and clearance. Contact HUD's Lead Based Paint Training Specialist, Rachael Riley at (202) 755-1785 x 107 for materials to hold your own work safe course.

Q2. Are there other options to using sweat equity without the owners taking classes?

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- A. The options are: Homeowners performing sweat equity may 1) take the one-day HUD work safe class (or for projects over \$25,000 in hard costs, take the DHS three-day course); 2) work on homes completed after 1/1/78; 3) work on homes that are certified LBP-free or abated (as long as LBP hazards are not created); or 4) only work in cleared areas accessible without exposure to LBP hazards on tasks without disturbing LBP or creating LBP hazards.

Q3. When is abatement required?

- A. When the intent is to permanently eliminate the LBP hazard (abate), and when the FRA is over \$25,000.

Q4. When do you have to “work safe?”

- A. Always, unless the area to be worked on is less than the de minimis levels.

Q5. How can I get information on certified training?

- A. Check out DHS at their website: <http://www.dhs.ca.gov/childlead/html/materials.html> You may also contact the CDBG program at (916) 263-0485 for updated information.

Q6. Do the LBP hazard regulations apply to public service activities?

- A. Only to the extent that these services are considered housing assistance, e.g., housing operations assistance.

Q7. Do LBP hazard regulations apply to mixed use activities?

- A. Only for the residences and in common use areas served by residents, e.g., exterior areas, entryways, laundry rooms, hallways, etc.

Q8. If a window and frame painted with LBP needs to be removed as part of the rehab, is this a rehab or lead hazard cost?

- A. If the component of the rehab would have been done regardless of the LBP, then it is considered a rehab cost.

Q9. Is LBP an activity delivery or construction cost?

- A. LBP evaluation/clearance costs are the same category as pest control inspections, i.e., you can count them as activity delivery, construction costs and roll them into the loan, grant them, etc. LBP mitigation is a construction cost. These costs can either be grants or loans

Q10. We need a list of certified LBP contractors in our area.

- A. Certified workers, supervisors, inspectors/risk assessors:
www.dhs.ca.gov/childlead/html/GENclist.html

Q11. We need a list of those qualified to work safe (workers only) in our area.

- A. www.leadlisting.org/leadlisting/leadlisting.nsf/RenovatorForViews?OpenForm&CA

Q12. Which certifications are required to address LBP hazards?

- A. It depends upon which level of LBP mitigation is taken. See Housing Rehabilitation or Homebuyer's Assistance matrices in table of contents.

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Q13. We need more funding to pay for certified contractor classes. Are any funds available?

- A. No Federal funds are currently available. However, the National Association of Attorneys General has information on its website about work safe trainings to begin in September 2003. Reference: www.naag.org/news/pr-20030512-lead_paint.php

Q14. Who fills out the forms and notices?

- A. For DHS forms, the certified risk assessor/inspector fills out forms #8551 and #8552, except in the case of visual assessments and presumptions. Visual assessments only require the online HUD training while the presumptions are an administrative task and may be filled out by any appropriate jurisdiction official.

Q15. What certifications are required on tribal land?

- A. EPA certification for LBP.

Q16. Does a contractor, certified in another state, still have to take the California DHS certified test to work in State?

- A. Yes. California does not recognize other states' certifications.

Q17. If a city is to purchase a 4-plex and rehabilitate it, do the Housing Acquisition or Housing Rehabilitation LBP rules apply?

- A. In cases of multiple coverage for LBP rules, use the most restrictive rules. In this case, the housing rehabilitation rules would apply.

Q18. In performing a visual assessment on a home for a first time homebuyers program, you find that the home is very old and likely has LBP. In the backyard is an obvious play area that has bare soil. There is no evidence of chipping paint on the ground. Should the bare soil be noted in the visual assessment as a LBP hazard?

- A. We urge a conservative approach and recommend that the area be covered in sod, or re-landscaped to cover the bare dirt.

N. DEFINITIONS

Abatement: Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "permanent"). Abatement includes the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards.

Bare soil: Soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

Certified: DHS licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision.

Chewable surface: An interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Clearance Examination: An activity conducted following lead-based paint hazard education activities to

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determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite.

Common Area: A portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

Containment: The physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Dwelling Unit: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

Encapsulation: The application of a covering or coating that acts as a barrier between the lead-based paint and the environment. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "permanent").

Enclosure: The use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "permanent").

Evaluation: A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Federally Rehabilitation Assistance: The amount used to determine which rehabilitation category used to address LBP hazards. This figure is calculated by taking the lower of the total Federal assistance in a dwelling and the total hard costs to rehab the dwelling.

Hazard reduction: Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA vacuum: A vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter.

Housing for the elderly: Retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more or other age if recognized as elderly by a specific Federal housing assistance program.

Impact Surface: An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Interim Controls: A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Lead-Based Paint: Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-Based Paint Hazard: Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead Hazard Information Pamphlet: "How to Protect Your Child From Lead in Your Home." The HUD pamphlet used to notice a resident who is about to participate in a LBP activity.

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Lead Hazard Reduction Activity: The activity chosen to address the existence of LBP and/or LBP hazards.

Lead Hazard Screen: A limited risk assessment activity that involves paint testing and dust sampling and analysis. If lead hazards are found, then a full risk assessment is required.

Multifamily property: A residential property containing five or more dwelling units.

Noticing: Notifying the occupants (or potential occupants) of a dwelling of LBP related actions or history pertaining to that dwelling. This noticing may take the form of a pamphlet or posted notices regarding LBP hazards found, treated, and cleared in a dwelling.

Paint Stabilization: Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint Testing: The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Permanent: An expected design life of at least 20 years.

Play Area: An area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

Presumption: An administrative decision to presume LBP is present. At times, this presumption may not require a risk assessment.

Risk Assessment: An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Risk Assessor/Inspector: This person performs risk assessments and clearance examinations. This person must take and pass the 40 hour Risk Assessor/Inspector class. DHS registration AND testing is required.

Safe Work Practices: A system of working to remove LBP that minimizes spreading LBP dust and debris which would contaminate the workers and residents of a dwelling.

Single Family Property: A residential property containing one through four dwelling units.

Single Room Occupancy (SRO) Housing: Housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-Lead Hazard: Bare soil on residential property that contains excessive amounts of lead.

Standard Treatments: A series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate: The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Supervisor: This person supervises certified and non-certified LBP workers. This person must have taken

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and passed the 40 hour LBP Supervisor class. DHS registration AND testing is required.

Visual Assessment: Looking for deteriorated paint, visible surface dust, debris and residue which may be a part of a risk assessment or clearance examination. A person must have taken the HUD VA test on the web. www.hud.gov/offices/lead/training/visualassessment/h00100.htm

Worker: There are two types of workers, certified and non-certified.

- Certified: A person who has taken the DHS, 3-day, 24 hour certified LBP certified worker class. While no DHS test is required, DHS registration is required. This person may work on any LBP project, but only under supervision.
- Non-Certified: A person who has taken the HUD 1 day, 8 hour “Work Safe” class. This worker may not work on abatement projects.

Zero-Bedroom Dwelling: Any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

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O. MATRICES AND CHECKLISTS

CDBG LBP Housing Rehabilitation Matrix

		0 → \$5,000	\$5,001 → \$25,000	\$25,001+	
Lead Hazard Evaluation	Type	Paint Testing on surfaces affected by rehabilitation			
		No Risk Assessment Required	In addition to Paint Testing, Risk Assessment (RA)		
	Cert. Required	DHS certified RA/Inspector			
<i>Notices/Reports</i>		LBP Pamphlet Renter's LBP Disclosure Form, if applicable Paint testing/Risk Assessment: DHS form 8552 Presumption: CDBG LBP-1 Hazard notification: DHS form 8551 prior to work start Clearance: DHS form 8552 LBP Hazard Reduction Activity: CDBG LBP-1			
Lead Hazard Reduction	<i>Type</i>		Safe work practices	Interim Controls	-Interior/Exterior paint disturbed by HR: Abatement -Exterior paint not disturbed by HR: Interim Controls
	Certificate Required	Worker	1) Workers (including sweat equity) must be "work safe" trained, and no supervisor required, or 2) Workers supervised by DHS certified Supervisor or 3) Workers have taken DHS certified worker class.	See "Under \$5,000" category.	Int/Ext: 3 Day DHS certified worker required
					Ext. w/Interim: See "Under \$5,000" category.
	Supervisor	See above.	See above.	Int./Ext.: Required	
Ext. w/Interim: Required					
Clearance Required		Yes, but only in the areas of rehab. Use DHS form 8552. Certified Risk Assessor or Project Monitor	Yes. Use DHS form 8552. Certified Risk Assessor or Project Monitor on all clearances		

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CDBG LBP Homebuyers Assistance Matrix

Lead Hazard Evaluation	Type	Visual Assessment
	Level of Cert. Required	HUD Online Test: http://www.hud.gov/offices/lead/training/visualassessment/h00100.htm
<u>E. Notices/ Reports</u>		-Pamphlet -Seller's LBP Disclosure Form -Visual Assessment: CDBG Form LBP-1 -Clearance: DHS form 8552 -Prior to LBP work: Notification DHS 8551 -LBP Hazard Reduction Activity, CDBG LBP-1
Lead Hazard Reduction	<i>Type</i>	Paint Stabilization of each deteriorated paint surface.
	Training required for workers/ supervisor	1) Workers (including sweat equity) must be "work safe" trained, and no supervisor required, or 2) Workers supervised by DHS certified Supervisor, or 3) Workers have taken DHS 3-day certified class.
Clearance Required		Yes. Use DHS form 8552. Certified Risk Assessor or Project Monitor on all clearances

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CDBG LBP Presumptions/Options

By Federal Rehabilitation Assistance Category	
\$0-\$5000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. No RA is required. Use safe work practices.
Over \$5,000 to \$25,000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. RA is required. Use interim controls on hazards revealed by the RA or created by the rehabilitation.
Over \$25,000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. RA is required. Abate all hazards revealed by the RA or created by the rehabilitation. On external areas not disturbed by the rehabilitation, may use interim controls.

<u>F.</u> <u>G. By Evaluation Type</u>	
Lead Hazard Screen	When RA are required, may use this abbreviated version, lead hazard screen. If LBP hazards are found, then full RA is required.
Paint Testing	When paint stabilization or interim controls, may opt to do paint testing on all surfaces with non intact paint. If no LBP then stabilization/interim controls not required.

<u>H.</u> <u>I. By Mitigation Method</u>	
Interim Controls	When interim controls are required, may presume LBP or LBP hazards exist throughout property and then enact standard treatments on hazards. No RA is required.
Abatement	When abatement is required, may presume that LBP or LBP hazards are present throughout, then abate hazards. No RA is required.

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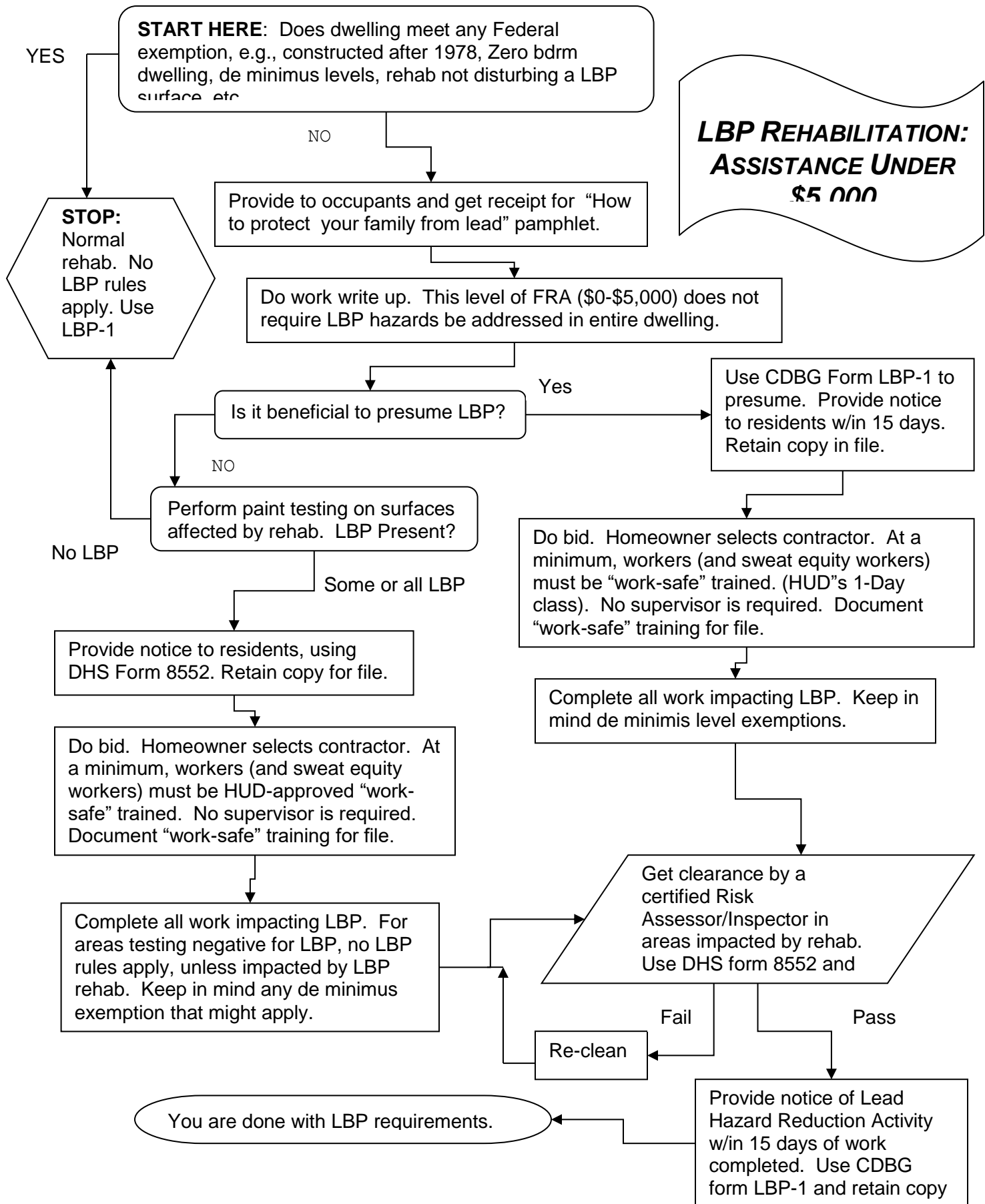
CDBG LBP Checklist for Rehabilitation

Name of Applicant: _____ Date: _____

Address: _____

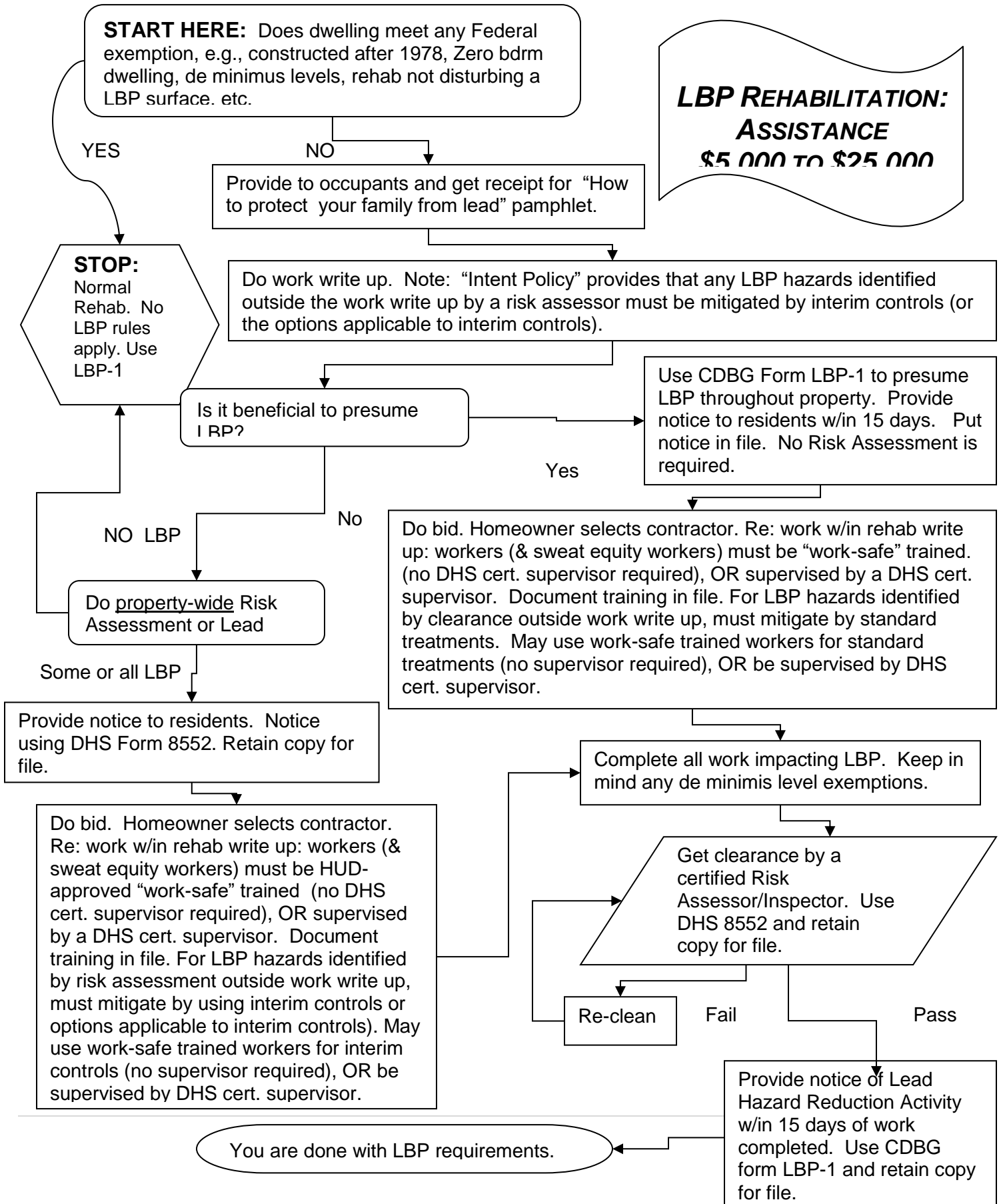
1. If the house was completed prior to 1/1/78, go on to #2. If the house was completed on or after 1/1/78, **STOP**, you are done w/your LBP. Provide proof of age. Use certificate of insurance, final sign off, or occupancy date.
2. Does the dwelling meet any of the exemptions listed in chapter 20 of the Grant Management Manual? If so, **STOP**, you are done w/your LBP requirements. Use LBP-1 to document. List exemption below: _____ . If not, proceed to #3.
3. Provide "How to Protect Your Family From Lead" pamphlet to recipients/occupants and retain proof of receipt. For tenants, use "Renter's Lead-Based Paint Disclosure" form found in Section 19 of this chapter. Use renter form, at a minimum, as long as the RLA is effective.
4. Obtain work write up. **Intent Policy:** Any LBP hazards identified outside work write up subject to mitigation controls required by Federal Rehabilitation Assistance Categories (see p.20-17), and must "work safe" on activities in work write up. Determine if a presumption strategy is beneficial for this dwelling. (see p.20-19) If presuming LBP, notice using Notice of Presumption, CDBG form LBP-1, and no RA required. If RA opted for, go to #5.
5. Procure DHS certified risk assessor/inspector for the RA and obtain proof of certification. Note: May proceed with RA, or proceed with abbreviated evaluation, the Lead Hazard Screen (LHS). LHS is property-wide, not for one portion of the dwelling. If LHS results are negative for LBP, then may begin the rehab w/o LBP concerns. If the LHS results are positive for LBP, then must proceed with an RA. In either case, within 15 days, notice and retain copies of the appropriate notice. Use DHS form 8552.
6. Address any relocation due to LBP work. See GMM, chapter 6.
7. Procure rehab contractor for work write up and use appropriate workers/supervisor (pp.20-17 & 20-20 (a)-(c)). At a minimum, must "work safe."
8. For identified LBP hazards called out in the RA, procure DHS certified LBP contractor and determine which LBP mitigation method(s) to use in the home.
9. Prior to work starting, notice and retain copy of DHS form 8551, Abatement of Lead Hazards Notification, which provides information about LBP work to be done.
10. Have the rehab and LBP work done and obtain proof of training (DHS certification for supervisor and all workers, work safe training, etc.). See p.20-17 & 20-20 (a)-(c).
11. Obtain clearance report, using DHS form 8552, Lead Hazards Evaluation Report (and DHS form 8551, when clearing abatement projects). Clearance report cannot be done by the same business entity that performed any evaluated component. Obtain proof of DHS RA certification.
12. Within 15 days of LBP hazard work being finalized, notice and retain copy of Notice of Hazard Reduction Activity. Use CDBG form LBP-1.

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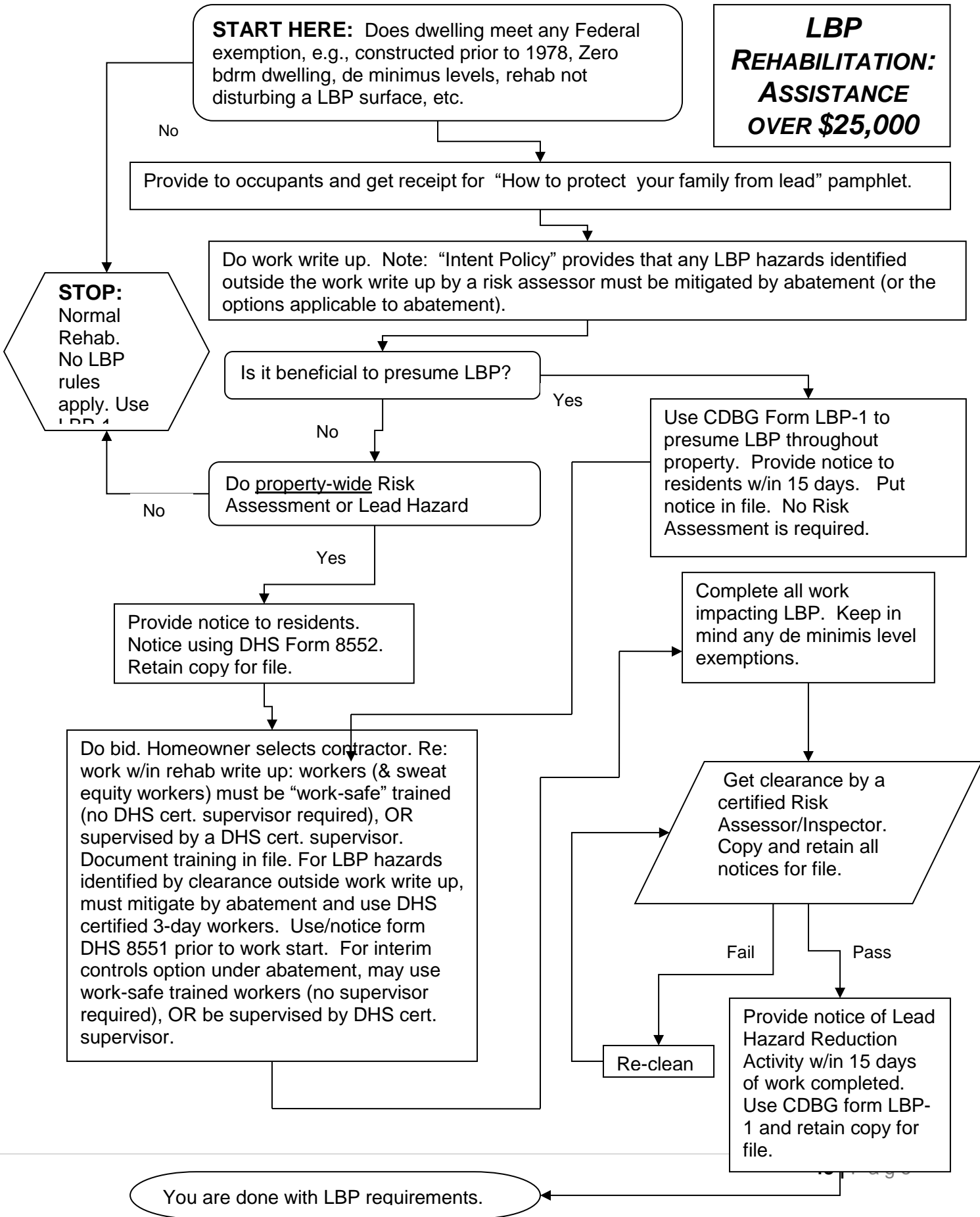


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**LBP REHABILITATION:
ASSISTANCE
\$5 000 TO \$25 000**



MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES



**LBP
REHABILITATION:
ASSISTANCE
OVER \$25,000**

START HERE: Does dwelling meet any Federal exemption, e.g., constructed prior to 1978, Zero bdrm dwelling, de minimus levels, rehab not disturbing a LBP surface, etc.

Provide to occupants and get receipt for "How to protect your family from lead" pamphlet.

Do work write up. Note: "Intent Policy" provides that any LBP hazards identified outside the work write up by a risk assessor must be mitigated by abatement (or the options applicable to abatement).

Is it beneficial to presume LBP?

STOP:
Normal Rehab.
No LBP rules apply. Use LBP-1

Use CDBG Form LBP-1 to presume LBP throughout property. Provide notice to residents w/in 15 days. Put notice in file. No Risk Assessment is required.

Do property-wide Risk Assessment or Lead Hazard

Provide notice to residents. Notice using DHS Form 8552. Retain copy for file.

Complete all work impacting LBP. Keep in mind any de minimis level exemptions.

Do bid. Homeowner selects contractor. Re: work w/in rehab write up: workers (& sweat equity workers) must be "work-safe" trained (no DHS cert. supervisor required), OR supervised by a DHS cert. supervisor. Document training in file. For LBP hazards identified by clearance outside work write up, must mitigate by abatement and use DHS certified 3-day workers. Use/notice form DHS 8551 prior to work start. For interim controls option under abatement, may use work-safe trained workers (no supervisor required), OR be supervised by DHS cert. supervisor.

Get clearance by a certified Risk Assessor/Inspector. Copy and retain all notices for file.

Re-clean

Provide notice of Lead Hazard Reduction Activity w/in 15 days of work completed. Use CDBG form LBP-1 and retain copy for file.

You are done with LBP requirements.

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CDBG LBP Checklist for Homebuyers Assistance

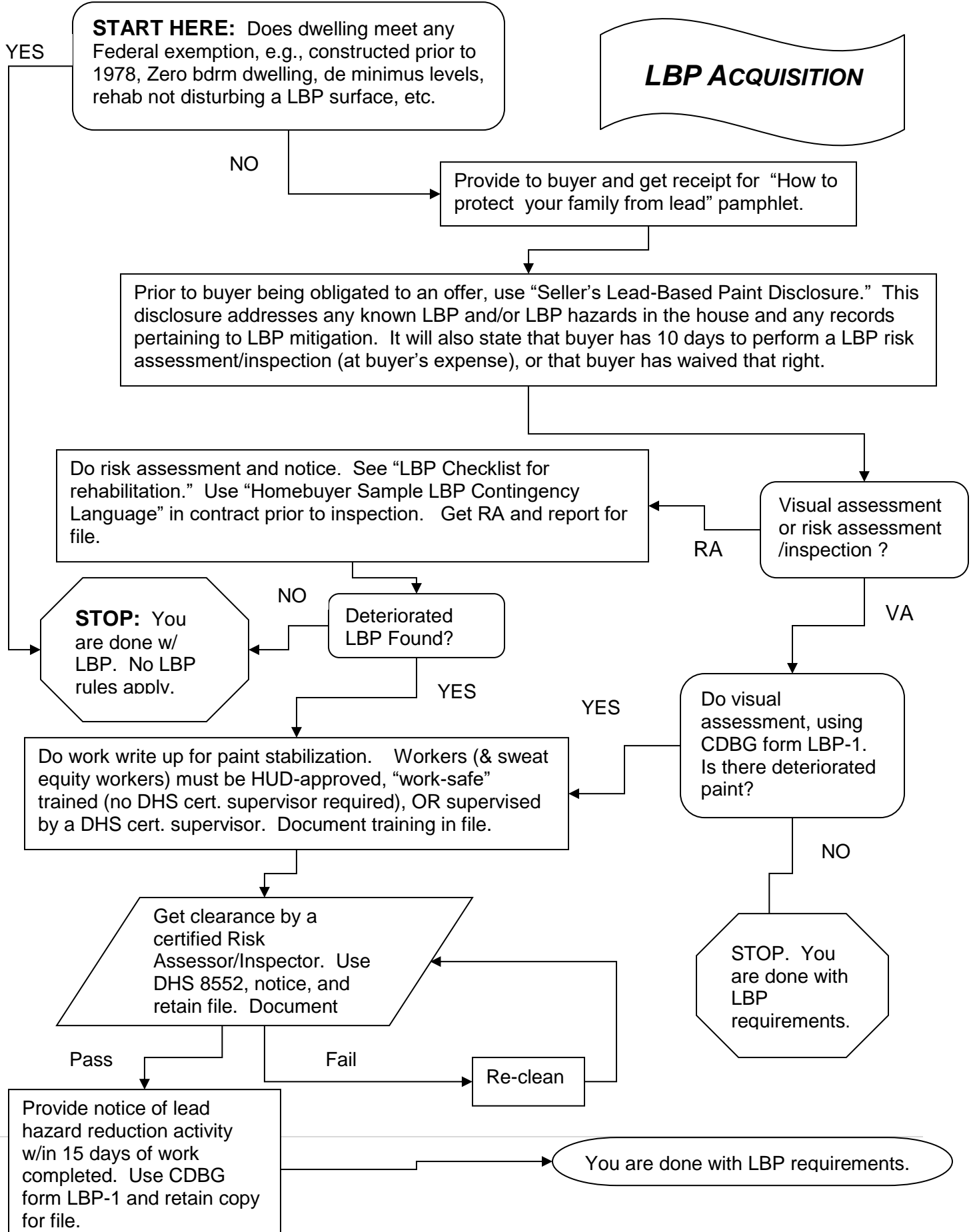
Name of Applicant: _____ Date: _____

Address: _____

1. If the house was completed prior to 1/1/78, go on to #2. If the house was completed on or after 1/1/78, **STOP**, you are done w/your LBP. Provide proof of age. Use certificate of insurance, final sign off, or occupancy date.
2. Does the dwelling meet any of the exemptions listed in chapter 20 of the Grant Management Manual? If yes, **STOP**, you are done w/your LBP requirements. Use LBP-1 to document. List exemption here: _____ . If not, proceed to #3.
3. Provide "How to Protect Your Family From Lead" pamphlet to recipients. Retain signed receipt from recipients/occupants stating that pamphlet was received
4. Prior to the purchaser being obligated to an offer, use the Lead Disclosure Notice that seller provides. This disclosure addresses any known LBP and/or LBP hazards in the house and any records pertaining to LBP mitigation. It will also state that the purchaser has 10 days to perform a LBP inspection, or that purchaser has waived that right. Ensure "Homebuyer Assistance Program Sample LBP Contract Contingency Language" is used in the purchase contract. If buyer waives inspection, sample LBP Contract Contingency Language is not required.
5. Do LBP visual assessment, using CDBG form LBP-1. If no deteriorated paint is found, **STOP**, you are done w/LBP requirements. If deteriorated paint is found, do work write up, and go to #6.
6. Procure DHS certified LBP contractor for paint stabilization. Prior to work being started, post or notice, and retain DHS forms 8551, *Abatement of Lead Hazards Notification*.
7. Obtain proof of certification for supervisor and all workers as required. See p.20-17.
8. Clearance Report, using DHS form 8552. Clearance report cannot be done by the same business entity that performed any evaluated component. Obtain proof of DHS RA certification.
9. Within 15 days of LBP hazard work being finalized, notice and retain copy of Notice of Hazard Reduction Activity. Use CDBG form LBP-1.

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LBP ACQUISITION



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Renters Lead-Based Paint Disclosure Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a Federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing.
Explain _____.

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing. List documents _____.

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) ___ Lessee has received copies of all information listed above.

(d) ___ Lessee has received the pamphlet Protect Your Family from Lead in Your Home.

Agent's Acknowledgment (initial)

(e) ___ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	_____	_____	_____
Lessor	Date	Lessor	Date
_____	_____	_____	_____
Lessee	Date	Lessee	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

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Form #: LBP - 2

XVIII. Seller's Lead-Based Paint Disclosure

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
 - (i) Known lead-based paint and/or lead-based paint hazards are present in the housing. Explain _____.
 - (ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
 - (i) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing. List documents: _____.
 - (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

- (c) _____ Purchaser has received copies of all information listed above.
- (d) _____ Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- (e) _____ Purchaser has (check (i) or (ii) below):
 - (i) received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
 - Or
 - (ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

- (f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Homebuyer Assistance Program

Sample Lead-Based Paint Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification. This ending date is: _____. **[Insert date 10 days after contract ratification or a date mutually agreed upon]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.)**

This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report.

The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counteroffer, the Purchaser shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

Seller Name: _____ Date: _____

Purchaser: _____ Date: _____

Property Address: _____

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Form #: LBP - 1

LEAD-BASED PAINT VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION FORM

Section 1: Background Information			
Property Address:		No LBP found or LBP exempt <input type="checkbox"/>	
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

Section 2: Visual Assessment. Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found. For multi-family housing, list at least the housing unit numbers and common areas and building components (including type of room or space, and the material underneath the paint).	

Section 3: Notice of Presumption. Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint hazards are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption: For multi-family housing, list at least the housing unit numbers and common areas, bare soil locations, dust-lead location, and or building components (including type of room or space, and the materials underneath the paint) of lead-based paint and/or hazards presumed to be present.	

Section 4: Notice of Lead-Based Paint Hazard Reduction Activity. Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types. For multi-family housing, list at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and the types of lead-based paint hazard reduction activities performed at the location listed.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity		
Printed Name:	Signature:	Date:

Section 6: Contact Information	Organization:	
Contact Name:	Contact Signature:	
Date:	Address:	Phone:

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

P. DHS FORMS

DHS forms 8551 and 8552 may be downloaded from DHS website at:
<http://www.dhs.ca.gov/childlead/html/GENregs.html>

Q. REFERENCES

- Federal Register, 24 CFR Part 35, et. al. Final Rule
- HUD's lead website at www.hud.gov/offices/lead/.
- Lead Listing's website at www.leadlisting.org, and
- HUD's April 2001 Interpretive Guidance: The HUD Regulation on Controlling LBP Hazards in Housing Receiving Federal Assistance and Federally Owned Housing Being Sold regulations
http://www.hud.gov/offices/lead/leadsaferule/1012qa_2001.pdf

R. DEPARTMENTS ROLE

The Department's CDBG staff will review the grantee and contractor's compliance with the Federal LBP regulations. At least one monitoring of the grantee's program will be completed during the life of the grant. In addition to the monitoring, staff will be available to assist in solving any program problems as they occur.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

S. SUPPORTING MATERIALS

Type	Document	Source
Forms	Lead Hazard Evaluation Report DHS form 8552	http://www.dhs.ca.gov/childlead/html/GENregs.html#Title%2017
	Abatement of Lead Hazards Notification, DHS form 8551	http://www.dhs.ca.gov/childlead/html/GENregs.html#Title%2017
	Lessor's Disclosure Information on LBP	Federal Register Vol. 61.No.45, 3/6/96
	Summary Notice of LBP Risk Assessment	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
	Notice that LBP or LBP Hazards are Presumed to be Present	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
	Summary Notice of Completion of LBP Hazard Reduction Activity	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
Lead Profession als	Index of lead Certified Professionals in California	www.dhs.ca.gov/childlead/html/B40.html
Pamphlets (cover only)	Protect Your Family From Lead in Your Home	www.hud.gov/offices/lead
	Reducing Lead Hazards When Remodeling Your Home	www.epa.gov/opptintr/lead/leadpbed.htm
	Lead in Your Home: A Parent's Reference Guide	www.epa.gov/opptintr/lead/leadpbed.htm
	Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work	www.hud.gov/nea/LBPguide.pdf
Fact Sheet	Federal Requirements for Volunteer Paint and Rehabilitation Programs (March 2000 Fact Sheet)	http://www.hud.gov/lea/FSVPrograms.doc
	HUD 4/19/01 LBP Intent Letter	http://www.hud.gov/utilities/intercept.cfm?/lea/EPA_HUDabatementletter.pdf
Regulation s	24 CFR 35	http://www.access.gpo.gov/nara/cfr/waisidx_01/24cfr35_01.html
	Interpretive Guidance: 24 CFR 35 -4/16/01-Table of Contents only	http://www.hud.gov/offices/lead
Subsides	Clearance Report Subsidies	http://www.hud.gov/news/release.cfm?content=pr02-022.cfm



OWNER-OCCUPANT HOUSING REHABILITATION PROGRAM GUIDELINES

County of Mono, California



CDBG APPROVED **DATE**

**MONO COUNTY
HOUSING REHABILITATION PROGRAM GUIDELINES**

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MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

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**MONO COUNTY
HOUSING REHABILITATION PROGRAM GUIDELINES**

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MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

I. GENERAL INTRODUCTION

The County of Mono, California, hereinafter referred to as the County, has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer a CDBG-funded Housing Rehabilitation Program. Mammoth Lakes Housing, Inc. (MLH) as the Subrecipient Program Operator, will administer the Housing Rehabilitation Program described herein, for the County.

The Rehabilitation Program is designed to provide assistance to eligible owner occupants in updating homes and rental units, attending to deferred maintenance, and addressing energy efficiency. Eligible housing units must be located within the unincorporated area of Mono County. The Rehabilitation Program provides this assistance in the form of deferred payment “silent” loans, below market interest rate loans, and grants.

Mono County completed a Housing Needs Assessment in 2017. According to the study approximately 39 percent of all housing units in the unincorporated area were built more than 30 years ago, with 21 percent built more than 40 years ago, and 13 percent built more than 50 years ago. These homes represent the maximum potential housing population in need of rehabilitation. While considering low inventory and high demand giving less incentive to update units, as well as the recent recession and severe weather conditions, many are in need of repairs. According to the report, approximately 445 renter occupied homes are in “fair” or “poor” condition and 156 owner occupied homes.

During the analysis, those with homes in fair or poor condition were asked to explain the types of repairs needed. 88 percent reported the need for repairs that they, or their landlord, have not yet made. Nearly 50 percent of those with homes in poor or fair condition need weatherization and two in five need window repairs/replacement. Heating, plumbing, electrical and appliances are all top repairs needed by at least one in five of these residents.

II. DEFINITIONS

Area Median Income: The midpoint in the family-income range for a metropolitan statistical area or for the non-metro parts of a state. The figure often is used as a basis to stratify incomes into low, moderate and upper ranges. Area Median Income is also adjusted for family size. See Attachment A for more information about qualifying incomes.

Below Market Interest Rate Loan: An amortized loan with a below market rate interest rate, secured by a deed of trust, with a fixed maximum term. Payments begin immediately. There is no prepayment penalty.

Deferred Payment Loan: A loan under which no payments are due until the property has transferred ownership, the primary loan is refinanced, or there is default on either loan.

Grant: A grant is an amount of money granted to an eligible household for qualifying rehabilitation which is not required to be repaid.

Household Income: The annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine Rehabilitation Program eligibility. For those types of income counted, gross amounts (before any deductions have been taken) are used; and the types of income that are not considered would be income of minors or live-in aides. Certain other household members living apart from the household also require special consideration. The household’s projected ability to pay must be used, rather than past earnings, when calculating income. Household income may include all amounts, monetary or not, which:

- 1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- 2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

- 3) Derived (during the 12-month period) from assets to which any member of the family has access.

For more information, please see Attachment A: 24 CFR Part 5 Annual Income Inclusions and Exclusions.

Housing Quality Standards (HQS): A basic set of performance requirements defined by the Department of Housing and Urban Development. See Attachment C.

Owner Builder: An owner-builder is defined as a person who constructs or renovates a domestic building on his or her own land, who is not in the business of building. Please consult the Mono County Building Division at the outset to determine the requirements.

Mono County Building Division
Mammoth Lakes Office, 760-924-1823
Bridgeport Office, 760-932-5420

Owner-Investor: An owner-investor is an owner of a property that is for rent for profit. The owner-investor does not need to meet the income restriction requirements of the program; however, the tenants of the property do.

Owner-Occupant: An owner-occupant is the primary owner of a property which is also their primary residence.

Targeted Income Group (TIG): All CDBG funds must benefit low and moderate income households. Low and moderate is defined as below 80% of the Area Median Income (p.12).

Targeted Area: The unincorporated area of Mono County, California.

III. APPLICANT ELIGIBILITY

A. Conflict of Interest

No member of the governing body of the locality and no other official, employee, or agent of the County of Mono government who exercises policy, decision-making functions, or responsibilities in connection with the planning and implementation of the program shall directly or indirectly be eligible for this program, unless the application for assistance has been reviewed and approved according to applicable California Department of Housing and Community Development (HCD) guidelines. This ineligibility shall continue for one year after an individual's relationship with Mono County ends.

A contractor with a vested interest in the property cannot bid on a rehabilitation job. Such a contractor may act as owner/builder, subject to standard construction procedures. Owner/builders are reimbursed for materials purchased which are verified by invoice/receipt and used on the job. Reimbursement occurs after the installation is verified by the Construction Supervisor to be part of the scope of work. Owner/builders are not reimbursed for labor. The County reserves the right to determine if the owner is capable of owner/builder rehabilitation work.

B. Occupancy

No unit to be rehabilitated will be eligible if it is currently occupied by an HCD ineligible household. Rental households occupying such units will be allowed to remain in the units. To prevent owners from evicting ineligible tenants before applying for the program, the owner must certify that no tenant has been forced to move without cause during the previous six months.

C. Temporary Relocation

Tenants will be informed of their eligibility for temporary relocation benefits if occupancy during rehabilitation constitutes a danger to health and safety of tenant or public danger or is otherwise undesirable because of the nature of the project. Relocated tenants will receive increased housing costs, payment for moving and related expenses and appropriate advisory services, as detailed in Mono County's Residential Anti-displacement and

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Relocation Assistance Plan.

Owner occupants are not eligible for temporary relocation benefits, unless health and safety threats are determined to exist by the project coordinator/construction supervisor.

D. Fair Housing

This program will be implemented in ways consistent with Mono County's commitment to Fair Housing. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Development Block Grant (CDBG) funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (children), physical or mental disability, sexual orientation, or other arbitrary cause.

IV. PROPERTY ELIGIBILITY

A. Location

In order to qualify for rehabilitation funds, units must be located within the targeted area.

B. Rehabilitation Standards

All repair work will meet Uniform Building Code standards. The priority will be the elimination of health and safety hazards. See Section V below for other eligible rehabilitation activities.

C. Property Improvements

All improvements must be physically attached to the property and permanent in nature. General property improvements should be limited to 15% of the rehabilitation loan amount. Luxury items are not permitted.

D. Lead-Based Paint

Program participants rehabilitating homes constructed prior to January 1, 1978 must be provided with the proper disclosure notification concerning lead-based paint (LBP) hazards. Whenever pre-1978 houses are rehabilitated under CDBG, please refer to Attachment D, CDBG Lead-Based Paint Requirements, for guidance. The costs associated with meeting these requirements are eligible to be paid for with CDBG funds, and should be considered during program design.

V. ELIGIBLE IMPROVEMENTS

Rehabilitation needs will be addressed in the following priority:

- 1. Health and Safety:** Examples include correcting plumbing, electrical, structural, mechanical and roof deficiencies, modifications for handicap accessibility, room additions to resolve overcrowding and any other Housing Quality Standards (HQS) items (see Attachment C). All units shall have working smoke detectors and carbon monoxide detectors. Overcrowded conditions will be considered to exist when parents and children must share a bedroom, when children of the opposite sex must share a bedroom, and when a disabled person is required to share a room. A bathroom addition may be considered when five or more persons occupy a unit with a single bathroom.
- 2. Converting to Current Uniform Building Code (UBC) and Other Standards:** All work that may bring the property into compliance with the the Mono County, California Code, the Uniform Building Code, or other code requirements is also eligible. Examples include moving bathroom access to hallways or off of kitchen, stairs, and porch upgrades. Also, paving driveways, creating covered parking, and other site work.
- 3. Energy Conservation:** Examples include insulation, reducing air infiltration through window and door replacement, weather-stripping and caulking, and replacing inefficient water heaters, refrigerators, clothes dryers, ovens, low flow water fixtures, and furnaces. Also the replacement of wood stoves not in compliance with the Environmental Protection Agency guidelines.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

4. **Extension of Useful Life:** Examples include repairing siding and sheet-rock, painting, new flooring, new cabinets, new interior doors, gutters, and foundation upgrades and repairs.
5. **General Property Improvements:** Only general property improvements that enhance the overall exterior appearance of the property will be allowed under this program. Examples include demolition of any unsightly structures, removal of debris, and repairing or replacing of fencing, carports and garages. A new garage or carport may be constructed if the property does not contain any sheltered parking. The conversion of a carport to a garage is also eligible. However, not more than fifteen percent (15%) of the rehabilitation loan may be used for general property improvements.

VI. OWNER OCCUPANT

A. Eligible Individuals & Income Requirements

Owner Occupant: To be eligible, household income must be equal to, or less than, the applicable HCD income guidelines. Owner will be required to provide income documentation (see p. 12 for Income Limits and Attachment A for an explanation of how Income is calculated).

B. Financing Options

i. Loan Amount

- An eligible owner may qualify for the full cost of the rehabilitation work needed to comply with Uniform Building Code standards. Maximum assistance with CDBG funds is **\$50,000**. Total indebtedness against property will not exceed 100 percent of after rehabilitation value. Rehabilitation costs for CDBG funded jobs may be supplemented with personal financing or with other loan or grant programs, which are sources of leverage for the County.

ii. Types of Financing and Terms

- Deferred Payment Loans (DPL) - Non-interest bearing loan, secured by a deed of trust, with no payback required until the participant sells or transfers title or discontinues residence in the dwelling, unless sold or transferred to a targeted income group household (see Section VIII). Payments may be made voluntarily on a DPL.
- Grants are limited, with a maximum **\$10,000** per household (see Section *ii.b* below for grant eligibility requirements). Total CDBG program funds distributed as grants shall not exceed **\$70,000**.

iii. Determining Eligibility

- a. Households that meet the income restriction guidelines are eligible to receive DPL financing.
- b. A limited number of \$10,000 grants are available as follows:
 - ✓ **Senior Citizen:** at least 62 years old.
 - ✓ **Handicapped:** only for handicap modifications to a house with one or more physically handicapped occupants who would function more independently if such modifications were installed.
 - ✓ **Lowest Targeted Income Group:** with gross annual income less than 50 percent of Mono County area median income, adjusted for household size.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

C. Residency Requirements

Owner occupants will be required to submit to the Program Operator between May 1 and July 31 of each year for the term of the loan:

- Proof of occupancy in the form of a copy of a current utility bill;
- Statement of unit's continued use as a residence;
- Declaration that other title holders do not reside on the premises.

In the event that an owner occupant sells, transfers title, or discontinues residence in the rehabilitated or purchased property for any reason, the loan is due and payable.

If the owner occupant sells or otherwise transfers title of the property to a targeted income group household, the County will consider subordinating the loan and continuing all or part of the lien as a DPL.

If the owner occupant dies, and if the heir to the property lives in the house and is income eligible, the heir may be permitted, upon approval by Mono County, to assume the loan at the rate and terms the heir qualifies for under current participation guidelines.

If the owner occupant dies and the heir is not income eligible, the loan is due and payable.

If the owner occupant dies and the heir is not income eligible, but he or she chooses to rent the unit to TIG households and agrees to comply with owner-investor restrictions, the heir may be permitted, upon approval by Mono County, to assume the loan at the same rate and terms offered owner-investors under current program guidelines. If the heir/owner-investor does not comply with owner-investor restrictions, the loan is due and payable.

If an owner occupant wants to convert the rehabilitated property to a rental unit, the owner must notify Mono County in advance. If the County approves the conversion of an owner occupied unit to a rental, the owner will be required to comply with the provisions of the owner-investor guidelines, including rent limitation provisions and financing arrangements.

If an owner wants to convert the rehabilitated property to any commercial or non-residential use, the loan is due and payable.

VII. RECEIVING LOAN PAYMENTS

Homebuyer Program Loan payments will be made to:

Mono County	Physical Location
Controller's Office	Bridgeport Courthouse Annex II
PO Box 556	25 Bryant Street
Bridgeport, CA 93517	Bridgeport

The Rehabilitation Program will be the recipient of loan payments or recapture funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the CDBG Program Income Account, as required by HCD. The Rehabilitation Program Lender (the administrator) will accept loan payments from borrowers paying BMIR loans, prepaying deferred loans, and from borrowers making payments in full upon sale or transfer of the property. All loan payments are payable to the Sponsor.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

VIII. DEFAULT AND FORECLOSURE

If an owner defaults on a loan, and foreclosure procedures are instituted, they shall be carried out according to the policies adopted in Mono County's Rehabilitation Loan Policies and Procedures (Attachment B).

IX. INSURANCE

Fire Insurance

The applicant shall maintain fire insurance on the property for the duration of the loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify Mono County as Loss Payee for the amount of the loan(s). A binder shall be provided to the County.

In the event the applicant fails to make the fire insurance premium payments in a timely fashion, Mono County at its option, may make such payments for a period not to exceed 60 days. The County may, in its discretion and upon the showing of special circumstances, make such premium payments for a longer period of time. Should the County make any payments, it may, in its sole discretion, add such payments to the principal amount that the applicant is obligated to repay the County under this program.

Flood Insurance

In areas designated by HUD as flood prone, the owner is required to maintain flood insurance in an amount adequate to secure the Rehabilitation Loan. This policy must designate the Mono County as Loss Payee. The premium may be paid by the Rehabilitation Loan for one year.

X. LOAN OR GRANT APPROVAL

All loans and grants must be approved by the Finance Director, County Administrative Officer, or his/her designees. In order to obtain CDBG financing, applicants must meet all property and eligibility guidelines in effect at the time of loan approval. Applicants will be provided written notification of approval or denial.

XI. REPAIR CALLBACKS

In the event that a contractor must be called back to make corrections on rehabilitation work items that are not covered by the one year warranty, the County has the option to cover the costs through the current CDBG construction budget.

XII. PROGRAM COMPLAINT AND APPEAL PROCEDURE

Complaints concerning the CDBG Program should be made in writing and filed with the County. The County will then schedule a meeting with the CDBG Loan Review Committee. Their written response will be made within fifteen (15) working days. If the applicant is not satisfied with the committee's decision, a request for an appeal may be filed with the Board of Supervisors. Final appeal may be filed in writing with HCD within one year after denial or the filing of the Project Notice of Completion.

XIII. GRIEVANCES BETWEEN PARTICIPANTS AND CONSTRUCTION CONTRACTOR

Contracts signed by the contractor and the participant include the following clause, which provides a procedure for resolution of grievances:

Any controversy arising out of or relating to this Contract, or the breach thereof, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order who shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

prevailing in any arbitration proceeding shall be entitled to recover from the other all attorney's fees and costs of arbitration.

XIV. CONTRACTING PROCEDURES

- All housing rehabilitation work must be carried out using the CDBG adopted housing rehabilitation guidelines.
- The County will prepare, advertise the bid package and assist the homeowner in negotiating the contract.
- The homeowner will select the contractor.
- All contractors must be checked and cleared with HUD'S federal debarred list of contractors.
- All contractors must be actively licensed and bonded with the State of California.
- All contractors must have public liability insurance to Mono County's required limits, Workmen's Compensation Insurance, unemployment and disability insurance.
- All contractors must comply with CDBG federal and state regulations.
- A Notice of Completion must be recorded with the County Recorder.

XV. SWEAT EQUITY

Participants who wish to perform sweat equity will sign a written commitment itemizing the work they will perform, a time schedule for completion and a dollar value of the contribution.

Owners that contribute sweat equity that involves painting will not participate in activities that include the abatement or mitigation of lead paint hazards without first being trained on Safe Work Practices as required by HUD and provide documentation of such in the project file.

XVI. AMENDMENTS

Amendments to these guidelines may be made by the County through a public hearing process and submitted to HCD for approval.

XVII. EXCEPTIONS

Exceptions to these guidelines will require County Administrative Officer and HCD approval.

XVIII. HUD INCOME LIMITS ADJUSTED FOR FAMILY SIZE FOR MONO COUNTY

2017 Mono County 80% Area Median Income (AMI) Adjusted for Household Size *Eligible owner-occupants/tenants cannot earn more than these limits <i>Effective June 15, 2017</i>	
Household Size	80% AMI
1 person	\$42,500
2 person	\$48,550
3 person	\$54,600

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

4 person	\$60,650
5 person	\$65,550
6 person	\$70,400
7 person	\$75,250
8 person	\$80,100

XIX. ATTACHMENTS

The following documents are attached and form part of these guidelines:

- **ATTACHMENT A:** 24 CFR Part 5 Annual Income Inclusions and Exclusions
- **ATTACHMENT B:** Mono County Rehabilitation Loan Servicing Policies and Procedures
- **ATTACHMENT C:** HUD Housing Quality Standards
- **ATTACHMENT D:** CDBG Lead Based Paint Requirements

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

ATTACHMENT A:

24 CFR Part 5 Annual Income Inclusions and Exclusions for Federal Programs

As of May 27, 2010

CODE OF FEDERAL REGULATIONS

Title 24: Housing and Urban Development

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart F—Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

Source: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

- (a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;
- (b) Determining payments by and utility reimbursements to families assisted in these programs;
- (c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:
 - (1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;
 - (2) Owner selection preferences; and
 - (3) Owner reexamination of family income and composition;
- (d) Determining adjusted income, as provided in §5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable

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to these programs; and

- (e) Determining earned income disregard for persons with disabilities, as provided in §5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

[66 FR 6222, Jan. 19, 2001]

§ 5.603 Definitions.

As used in this subpart:

- (a) *Terms found elsewhere in part 5* —

- (1) *Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible entity* and *Section 8* are defined in §5.100.
- (2) *Subpart D.* The terms “disabled family”, “elderly family”, “family”, “live-in aide”, and “person with disabilities” are defined in §5.403.

- (b) The following terms shall have the meanings set forth below:

Adjusted income: See §5.611.

Annual income: See §5.609.

Child care expenses: Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses: Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Economic self-sufficiency program: Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low-income family: A family whose annual income does not exceed 30 percent of the median-income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if

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HUD finds that such variations are necessary because of unusually high or low family incomes.

Full-time student: A person who is attending school or vocational training on a full-time basis.

Imputed welfare income: See §5.615.

Low-income family: A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses: Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income: One twelfth of adjusted income.

Monthly income: One twelfth of annual income.

Net family assets:

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under §5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in part 891 of this title.

Responsible entity: For §5.611, in addition to the definition of "responsible entity" in §5.100, and for §5.617, in addition to only that part of the definition of "responsible entity" in §5.100 which addresses the Section 8 program covered by §5.617 (public housing is not covered by §5.617), "responsible entity" means:

- (1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

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- (2) For the Rent Supplement Payments Program, the owner of the multifamily project;
- (3) For the Rental Assistance Payments Program, the owner of the Section 236 project;
- (4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable “State” or “unit of general local government” or “nonprofit organization” as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;
- (5) For the Shelter Plus Care Program, the “Recipient” as defined in 24 CFR 582.5;
- (6) For the Supportive Housing Program, the “recipient” as defined in 24 CFR 583.5;
- (7) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;
- (8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the “Borrower” as defined in 24 CFR 891.505; and
- (9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “owner” as defined in 24 CFR 891.305.

Tenant rent: The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See §5.613.

Utility allowance: If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement: The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family: A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Welfare assistance: Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

Work activities: See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 6223, Jan. 19, 2001; 67 FR 47432, July 18, 2002]

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Family Income

§ 5.609 Annual income.

- (a) Annual income means all amounts, monetary or not, which:
- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
 - (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
 - (3) Which are not specifically excluded in paragraph (c) of this section.
 - (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
- (b) Annual income includes, but is not limited to:
- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
 - (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
 - (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
 - (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
 - (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
 - (6) Welfare assistance payments: (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.

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- (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
 - (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
 - (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).
 - (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.
- (c) Annual income does not include the following:
- (1) Income from employment of children (including foster children) under the age of 18 years;
 - (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
 - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
 - (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
 - (5) Income of a live-in aide, as defined in §5.403;
 - (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
 - (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - (8) (i) Amounts received under training programs funded by HUD;
 - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside

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for use under a Plan to Attain Self-Sufficiency (PASS);

- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
 - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
 - (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
 - (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
 - (12) Adoption assistance payments in excess of \$480 per adopted child;
 - (13) [Reserved]
 - (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
 - (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
 - (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
 - (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.
- (d) Annualization of income: If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a

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redetermination at the end of the shorter period.

[61 FR 54498, Oct, 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 67 FR 47432, July 18, 2002; 70 FR 77743, Dec. 30, 2005]

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in §5.100 and §5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

- (a) Mandatory deductions: In determining adjusted income, the responsible entity must deduct the following amounts from annual income:
 - (1) \$480 for each dependent;
 - (2) \$400 for any elderly family or disabled family;
 - (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family; and
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
 - (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.
- (b) Additional deductions:
 - (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.
 - (2) For the HUD programs listed in §5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

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ATTACHMENT B:

Mono County Rehabilitation Loan Servicing Policies and Procedures

Mono County, here after called "Lender," has adopted these policies and procedures in order to preserve its financial interest in properties, who's "Borrowers" have been assisted with public funds. The Lender will to the greatest extent possible follow these policies and procedures but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions which are associated with them.

The policies and procedures are broken down into the follow areas: 1) making required monthly payments or voluntary payments on a loan's principle and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) required monitoring; 5) loans with annual occupancy restrictions and certifications; 6) required noticing and limitations on any changes in title or use of property; 7) required noticing and process for requesting a subordination during a refinance; 8) process of foreclosure in case of default on the loan.

1. Loan Repayments:

The Lender will collect monthly payments from those borrowers who are obligated to do so under Notes, which are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly date.

For Notes associated with deferred payment loans, the Lender may accept voluntary payments on the loan. Loan payments will be credited to the interest first and then to principal. The borrower may repay the loan balance at any time with no penalty.

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a second mortgage. If borrower fails to maintain the necessary insurance, the Lender may take out forced place insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower's new insurance.

When a property is located in a 100 year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance will be required at close of escrow. The lender may check the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes then the lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower's loan is in second position behind an existing first mortgage, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify the lender of initiation of a foreclosure action. The Lender will then have time to contact the Borrower and assist them in bringing the first loan current. The Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Lender is in a third position and receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

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4. Required Rent Limitation Agreement for Investor Properties:

All owner-investor properties which receive loans from the Lender will be required to enter into a rent limitation agreement which restricts the tenants and the rents on the property for a fixed period of time, depending on the public funds used. The rent limitation agreement will be recorded on title of the property and non-compliance with this agreement can lead to foreclosure action by the Lender. The rent limitation agreement will be monitored annually to ensure that low or very low-income households occupy the assisted investor units and that the rents charged to those households is affordable. In some cases the units must be inspected annually to ensure that they are up to minimum health and safety standards. At the end of the designated affordability period, the Lender will release the Borrower from the rent limitation agreement.

5. Annual Occupancy Restrictions and Certifications:

On some owner occupant loans the Lender may require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Other loans may have income and housing cost evaluations, which require a household to document that they are not able to make repayments, typically every five years. These loan terms are incorporated in the original note and deed of trust.

6. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original program terms and conditions such that it remains available as an affordable home for low income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Lender. Changes in title or occupancy must be in keeping with the objective of benefit to the Targeted Income Group (TIG) families.

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Lender's Loan Committee.

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on family size and household income, provided the heir is in the TIG. If the heir intends to occupy the property and is non-TIG, the balance of the loan is due and payable. If the heir intends to act as an owner-investor, the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Lender's Loan Committee.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner occupied to rental, the loan is due in full. If the Borrower or new owner-investor requests that the existing loan be assumed and agrees to the current Lender rates and terms for owner-investor properties and the rent limitation agreement, then the outstanding balance may be refinanced, subject to the review and approval of the Lender's Loan Committee.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Lender allow for a partial conversion where some of the residence is used for a business but the family still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

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7. Requests for Subordinations:

When a Borrower wishes to refinance the property, they must request a subordination request to the Lender. The Lender will only subordinate their loan when there is no "cash out" as part of the refinance. Cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third party debt pay offs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the housing cost of the family with a lower interest rate and the total indebtedness on the property should not exceed the current market value.

Upon receiving the proper documentation from the refinance agency, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Lender.

8. Process for Loan Foreclosure:

Upon any condition of loan default: 1) nonpayment; 2) lack of insurance or property tax payment; 3) violation of rent limitation agreement; 4) change in title or use without approval; 5) default on senior loans, the Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount, or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can provide future payments. If this is the case then the Lender may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien may be eliminated due to insufficient sales proceeds.

9. Lender As Senior Lien Holder:

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- A. Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?

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- B. Can the Borrower refinance with a private lender and pay off the Lender?
- C. Can the Borrower sell the property and pay off the Lender?
- D. Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- E. Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise the Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

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ATTACHMENT C:

HUD Housing Quality Standards (HQS)

The Department of Housing and Urban Development (HUD) established Section 8 housing choice vouchers so that low-income individuals could find quality housing in the open market. To make sure that any unit rented to a tenant with a housing choice voucher is up to standard, a housing inspection is conducted on the unit by the local Public Housing Authority.

HUD has established certain Housing Quality Standards that are the basis for these inspections. These standards ensure that all units that are rented to tenants with housing choice vouchers meet certain requirements.

Thirteen performance requirements encompass the Housing Quality Standards. These requirements include:

1. Sanitary Facilities
2. Food Preparation and Refuse Disposal
3. Space and Security
4. Thermal Environment
5. Illumination and Electricity
6. Structure and Materials
7. Interior Air Quality
8. Water Supply
9. Lead-Based Paint
10. Access
11. Site and Neighborhood
12. Sanitary Conditions
13. Smoke Detectors

These performance requirements are guidelines for home inspectors. The Housing Quality Standards also include acceptability standards for each performance requirement which can help an inspector determine if an item meets HUD's standards. The inspectors must use their own judgment and discretion to interpret these rules in certain cases.

Here are some sample criteria for each performance requirement to give you an idea of what the inspector is looking for. For the complete requirements and standards, please refer to Chapter 10: Housing Quality Standards, of HUD's Housing Choice Voucher Guidebook.

1. Sanitary Facilities

Sample Criteria:

- The bathroom must be located in a private room within the residence.
- The bathroom must contain a flushing toilet, a shower or tub and a sink.
- The shower or tub and the sink must have functioning hot and cold water.

2. Food Preparation and Refuse Disposal

Sample Criteria:

- The unit must have an oven and a stove or a range. A microwave oven can be substituted.
- The unit must have a kitchen sink with hot and cold water and a proper sink trap.

3. Space and Security

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Sample Criteria:

- The unit must have a living room, a kitchen and a bathroom.
- Any doors or windows that are accessible from the outside must be able to be locked.

4. Thermal Environment

Sample Criteria:

- The heating system must safely provide heat to each room. The local PHA will determine what temperature is considered adequate during each month of the year.
- The cooling system must safely cool each room.

5. Illumination and Electricity

Sample Criteria:

- The living room and each bedroom must have at least one window.
- The kitchen must have at least one working outlet.
- The living room and each bedroom must have at least two working outlets.

6. Structure and Materials

Sample Criteria:

- All ceilings, walls and floors must not show any signs of bulging, buckling and must not contain large holes.
- The roof must be structurally sound.
- Handrails are required when there are four or more steps.

7. Interior Air Quality

Sample Criteria:

- Bathrooms must have a window that can be opened or must have other adequate ventilation.
- The unit must be free from dangerous pollutants, such as carbon monoxide.

8. Water Supply

Sample Criteria:

- The water supply must be free from contamination.
- Plumbing pipes and fixtures must be free from leaks.

9. Lead-Based Paint

Sample Criteria:

- Units constructed before 1978 must be free from lead-based paint hazards.
- There must be no chipping, cracking or peeling paint or other hazards.

10. Access

Sample Criteria:

- There must be two ways to exit the unit. A fire escape is considered an alternate means of exit.
- The fire escape or other emergency exit cannot be blocked.

11. Site and Neighborhood

Sample Criteria:

- There must not be excessive noise or trash accumulation in the neighborhood.
- There must not be an abnormal amount of air pollution.

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12. Sanitary Conditions

Sample Criteria:

- There must not be a rodent or vermin infestation.

13. Smoke Detectors

Sample Criteria:

- There must be at least one working smoke detector on each level of the unit, including the basement. Local codes may have stricter requirements, such as placing a smoke detector outside of each bedroom.
- All smoke detectors must be operational.

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ATTACHMENT D:

CDBG Grant Management Manual: CHAPTER 20

LEAD BASED PAINT REQUIREMENTS

[HTTP://WWW.HCD.CA.GOV/FA/CDBG/MANUAL/CHAPTER20.HTML](http://www.hcd.ca.gov/fa/cdbg/manual/chapter20.html)

A. INTRODUCTION

The purpose of this chapter is to provide information and guidelines on the Federal lead-based paint (LBP) regulations. Additional program related information is also located in the following chapters: Chapter 12 – Monitoring, Chapter 14 – Program Income, Chapter 16 – Housing Rehabilitation, and Chapter 17 -- Home Buyer Assistance.

HUD issued these regulations to protect adults and young children from LBP hazards in housing built prior to 1978 that is financially assisted or sold by the Federal government. Children six and under are particularly vulnerable since lead poisoning can cause significant injury, including permanent brain damage, reduced intelligence, and behavioral problems. A large percentage of children with lead poisoning are in low-income families living in older homes with heavy concentrations of LBP. The most common source of lead exposure is dust from deteriorated LBP and lead contaminated soil. Due to increased understanding of the harmful effects of lead exposure on children and adults, Federal LBP requirements have become more stringent.

B. GRANTEE RESPONSIBILITIES

All CDBG grantees are required to follow the Federal LBP regulations as listed in 24 CFR 35 in implementing their activities. Part J is for Housing Rehabilitation Programs, and part K is for Homebuyer Assistance Programs. Essentially, grantees are responsible to inform residents of the potentials of LBP hazards in their home, evaluate the degree of LBP hazards, mitigate these hazards, provide clearance on the rehabilitated areas affected by the LBP work, and provide all appropriate notices.

C. EFFECTIVE DATE –CDBG STATE PROGRAM

There have recently been two phases of reform in the LBP hazard regulations. Regulations regarding “working safely” with lead took effect on November 15, 1999. The second phase occurred when HUD published new regulations streamlining all LBP hazard requirements for CDBG grants. CDBG grants with award letters dated on or after September 15, 2000 are subject to the new regulations; however, implementation was delayed until January 10, 2002. Jurisdictions with an award letter prior to September 15, 2000 are not subject to the LBP regulations. Once a jurisdiction receives an award after September 15, 2000 for an activity subject to the LBP regulations, then all activities subject to LBP rules, including PI are subject to the LBP regulations.

Each set of regulations are in effect for houses and residences built prior to January 1, 1978 (As of January 1, 1978, LBP was banned nationwide for residential use). For the CDBG program, these new regulations largely apply to housing acquisition and rehabilitation of residences.

These new regulations may be found in Title 24, Part 35 of the Code of Federal Regulations (24 CFR 35) or on the Internet at www.access.gpo.gov/nara/cfr/waisidx_01/24cfr35_01.html

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D. CRITICAL LAWS OR REGULATIONS PERTAINING TO LBP

If other Federal, State, tribal or local law, ordinances, codes or regulations are applicable to the CDBG activity, the more protective definition shall apply. Following are critical state and Federal laws and regulations pertaining to LBP hazards.

1) Federal

- 24 CFR Part 35 – Lead Based Paint Prevention in Certain Residential Structures (HUD)
- Toxic Substances Control Act Section 406 - Requirements of Hazard Education Before Renovation for Target Housing
- 40 CFR Part 745 – Identification of Dangerous Levels of Lead (EPA)

2) State

- Title 17 Sec. 35000 – Accreditation, Certification, and Work Practices for LBP and Lead Hazards (DHS)
- Cal/OSHA Title 8 Sec. 1532.1 – Construction Safety Orders – Lead
- Cal/OSHA Title 8 Sec. 5194 – Hazardous Communication
- Civil Code 1102-1102.16 –Real Estate Lead Hazard Disclosure Requirements (HUD also has its own disclosure requirements. See next section.)
- Proposition 65 – Safe Drinking Water and Toxic Enforcement Act of 1986

3) Local

- Check with your city or county for applicable local codes.

E. SIGNIFICANT EXEMPTIONS (24 CFR 35.115)

HUD's LBP requirements do not apply to:

- Dwellings completed on or after 1/1/78.
- Housing exclusively for the elderly or person with disabilities, unless a child under age six resides (100 days or longer) or is expected to reside there.
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks.
- Housing found by certified inspection to be free of LBP.
- Housing in which all LBP has been properly identified, removed, and cleared (This does not apply where enclosure or encapsulation has been used as a method of abatement).
- Unoccupied reconstruction housing that will remain vacant until it is demolished to the foundation.
- Non-residential property: Property or part of a property that will not be used for human residential habitation. Not exempt are common use areas, such as entryways, hallways, corridors, passageways, stairways or building exterior in a mixed-use building.
- Rehabilitation that does not disturb a painted surface.

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- Emergency repair action, which are those needed to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage.
- Historical sites/dwellings may use interim controls instead of abatement, under certain conditions.

For a complete list of exemptions see 24 CFR Part 35.115, referenced in the Appendix VI-A of this chapter.

F. WORKING SAFELY WITH LEAD (24 CFR 35.1350)

HUD's LBP regulations establish *safe work* practices which must be followed at all times. The exception to this rule is if the painted area to be affected falls within the de minimis levels. These are:

- 20 sq. ft. (2 sq. meters) on exterior surfaces;
- 2 sq. ft. (0.2 sq. meters) in any one interior room or space; or
- 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

The intent of work safe methods is to minimize the spread of leaded paint dust, paint chips, and debris. The following are the major provisions in the safe work practices regulations:

1) Qualifications to Perform Safe Work Practices

Workers must be trained in Safe Work Practices. For additional information on this training, contact: <http://www.leadlisting.org>.

2) Occupant Protection

The occupant and the environment must be protected from lead-contaminated or lead-containing materials during hazard reduction activities. The areas of concern are:

- *No Occupants At Worksite: Occupants shall not be permitted to enter the worksite during hazard reduction activities until after hazard reduction work has been completed and clearance, if required, has been achieved.*
- *Protection of Occupants Belongings: The dwelling and worksite shall be secured against unauthorized entry, and occupants' belongings shall be protected from contamination during hazard reduction activities by relocating or covering and sealing them.*
- *Temporary Relocation: Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible unit free of LBP hazards, except if:*
 - *Treatment will not disturb LBP, dust-lead hazards or soil lead hazards.*
 - *Interior: Treatment of the interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.*
 - *Building exterior: The windows, doors, ventilation intakes and other openings near the worksite are sealed during hazard control work and cleaned afterward; and a lead free entry is provided.*

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- *Treatment will be completed within five calendar days; the work area is sealed; the area within 10 feet of the containment area is cleared of debris at the end of the day; occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health, or environmental hazards.*

3) Worksite Preparation and Containment

The worksite for lead hazard reduction activities must be prepared to prevent the release of leaded dust and debris.

Workers must use practices that minimize the spread of leaded dust, paint chips, soil, and debris.

Warning signs are required at each entry to a room where lead hazard reduction activities are conducted when occupants are present, at the main and secondary entryways to a building from which occupants have been relocated, and at exterior worksites at a size and type readable from 20 feet (six meters) from the edge of the worksite. Signs need to be in the occupants' primary language to the extent practicable.

4) Prohibited Methods

The methods identified below may not be used at any time for work on surfaces known or suspected to contain LBP:

- Open flame burning or torching.
- Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- Abrasive blasting or sandblasting without HEPA local exhaust control.
- Heat guns operating above 1,100 degrees Fahrenheit, or those that operate high enough to char the paint.
- Dry sanding or dry scraping.
- Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations.

5) Worksite Cleanup

Good cleanup is critical to passing clearance and leaving the unit safe for habitation. The worksite shall be cleaned using methods, products, and devices that are successful in cleaning lead-contaminated dust, such as vacuum cleaners with HEPA filters or equivalent equipment and household or lead specific detergents or equivalent products.

6) Safe Work Practice Exemptions

- *Safe work practices are not required if paint has been tested and found to be lead-free.*
- *Safe work practices are not required in houses completed after 1978.*

7) Clearance (24 CFR 35.1340)

Clearance is performed to determine whether the lead hazard reduction process is complete and that no lead-dust or soil hazards remain in the areas of concern. The clearance report requires DHS Form 8552. A clearance examination involves a visual assessment, dust, and soil testing to determine if the unit is safe for occupancy. A certified inspector/risk assessor must perform clearance.

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The clearance examiner must prepare a clearance report in accordance with (24 CFR Part 35.1340) if lead hazard reduction activities other than abatement are performed. Use DHS form 8552. If abatement is conducted, a certified supervisor or project designer must prepare an abatement report in accordance with 40 CFR 745.227(e)(10). Essentially, this requires DHS form 8551 (that was previously filled out) to be attached to the clearance form (DHS 8552). The clearance notice must note each failed clearance.

G. LEAD HAZARD EVALUATION (24 CFR 35.110 and 35.1320)

Lead Hazard Evaluation methods involve an examination of a dwelling to check for lead hazards for every activity. Evaluation methods include risk assessments, lead hazard screenings, visual assessments, presumption of LBP, and paint testing. In California, the Department of Health Services certifies workers/supervisors/inspectors/risk assessors. Refer to the Department's website, www.dhs.ca.gov/childlead/ for more information. Below is a brief description of each evaluation method.

- **Risk Assessment:** Risk Assessment is a comprehensive investigation of a dwelling to identify LBP hazards that includes paint testing, dust and soil sampling, and a visual evaluation. Risk assessment results are summarized in a written report with recommendations for actions. Risk assessments are conducted by inspectors/risk assessors certified by the Department of Health Services.
- **Lead Hazard Screening:** Lead Hazard Screening is similar to a risk assessment. While the sampling is less extensive, the requirements are more stringent. If LBP hazards are detected, a full risk assessment must then be conducted. Lead hazard screens are conducted by certified risk assessors.
- **Visual Assessment:** A Visual Assessment of deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipped paint. A visual assessment does not require notification of lead hazard evaluation since the assessment does not evaluate lead-based paint and/or lead hazards. However, if hazards are discovered and addressed, the contractor must still meet the hazard reduction activity notification requirement. Visual assessments are conducted those who have taken the HUD online test at: <http://www.hud.gov/offices/lead/training>.
- **Presumption:** Presumption is an administrative decision, and no formal training is required. It makes a determination of LBP and/or LBP hazards based on non-testing information and is an alternative to performing lead hazard evaluation activities. In some cases, by presuming LBP and/or LBP hazards, hazard evaluations may not be required, but contractors must still conduct lead hazard reduction activities as required.
- **Paint Testing:** Paint Testing entails testing painted surfaces to determine if they contain LBP using methods such as an x-ray fluorescence (XRF) analyzer or laboratory analysis. Paint testing must be conducted by certified inspectors/risk assessors.

H. LEAD HAZARD REDUCTION METHODS (24 CFR 35.1330, 35.1325, and 35.1335)

Lead hazard reduction methods refer to specific types of treatment to address LBP hazards. Nothing precludes contractors from conducting additional lead hazard reduction methods beyond the minimum established for each activity. Lead hazard reduction methods include:

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1) Interim Controls

Interim controls temporarily reduce exposure to LBP hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education programs. A detailed description of interim controls are in 24 CFR 35.1330. Interim control methods include, but are not limited to:

- Paint Stabilization: Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.
- Treatment For Friction And Impact Surfaces: If LBP is found and exceeds acceptable levels or is presumed, the conditions creating friction or impact with surfaces with LBP such as those that rub, bind, or crush must be corrected. Examples of this work include hanging/binding doors, installing doorstops, or reworking windows.
- Safe Work Practices: All interim controls shall incorporate the use of safe work practices.
- Treatment For Chewable Surfaces: If a child under age six has chewed surfaces known to contain LBP or if LBP is presumed, these surfaces must be enclosed or coated, so they are impenetrable.
- Lead-Contaminated Dust Control: All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, window sills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum. Carpeting must be vacuumed, or rugs must be removed and vacuumed on both sides. Vacuuming must be done using HEPA vacuums.
- Lead-Contaminated Soil Control: If soil is lead-contaminated, interim controls that may be used include impermanent surface coverings such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.

2) Standard Treatments (24 CFT 35.1335)

Under certain conditions, if LBP is presumed, then the standard treatment method is triggered. Standard treatments apply to all applicable surfaces, including soil, to control LBP hazards that may be present. These methods include:

- Paint Stabilization: All deteriorated paint on exterior and interior surfaces must be stabilized through repairs, safe paint removal, and repainting. Or abatement may be performed.
- Smooth and Cleanable Horizontal Surfaces: All horizontal surfaces that are rough, pitted, or porous such as bare floors, stairs, windowsills, and window troughs must be covered with a smooth, cleanable covering or coating such as metal coil stock, plastic, polyurethane, or linoleum.
- Correcting Dust-Generating Conditions: All conditions that generate lead-contaminated dust such as those that rub, bind, or crush surfaces with LBP must be corrected. Examples include re-hanging doors, installing doorstops, or reworking windows.
- Bare Residential Soil: Soil is addressed using interim control methods including impermanent surface covering such as gravel, bark, and sod as well as land use controls such as fencing, landscaping, and warning signs.
- Safe Work Practices: All standard treatments shall incorporate the use of safe work practices.

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- Clearance: A clearance examination shall be performed at the conclusion of lead hazard reduction activities.
- Qualifications: An individual performing standard treatments must meet the training and/or supervision requirements.

3) **Abatement (24 CFR 35.1325)**

Abatement permanently (for at least 20 years) removes lead based paint and LBP hazards by a variety of measures, including removing LBP and its dust, encapsulating or enclosing the LBP, replacing components containing LBP, or removing or covering lead-contaminated soil. All abatement methods shall incorporate the use of safe work practices. Abatement shall then be conducted on all applicable surfaces, including soil, and completed when clearance is achieved.

4) **Qualifications To Perform Lead Hazard Reduction**

Paint Stabilization, Interim Controls, and Standard Treatments require certification as workers or supervisors.

Abatement must be conducted by certified workers and supervisors certified by California's Department of Health Services.

I. **REHABILITATION**

Requirements in the regulations for rehabilitation activities are found in 24 CFR Part 35, Subpart J. Rehabilitation activities require lead hazard evaluation and reduction activities be carried out for all projects constructed prior to 1978. Sections 6 through 11 of this chapter pertain directly to CDBG rehabilitation.

1) **Federally Rehabilitation Assistance Categories (24 CFR 35.930)**

a) **Rehabilitation Projects Less Than Or Equal To \$5000**

Rehabilitations of Residential property receiving an average of up to and including \$5,000 per unit in Rehabilitation Assistance are required to complete the following:

- i. Lead Hazard Evaluation: Paint testing must be conducted to identify lead based paint on all painted surfaces that will be disturbed or replaced.
- ii. The grantee may presume that LBP exists on all painted surfaces that will be disturbed or replaced and skip paint testing.
- iii. Lead Hazard Reduction: Grantees must repair all paint that will be disturbed during rehabilitation. If LBP is detected or assumed, safe work practices must be used during rehabilitation.
- iv. Noticing is required.
- v. Clearance is required only for the work area.

b) **Rehabilitation Projects: Over \$5,000 to \$25,000 Per Unit**

- i. There are two requirements for the Lead Hazard Evaluation:
 - Paint testing: Paint testing must be conducted to identify lead based paint on all painted surfaces that will be disturbed or replaced. *Interim controls are used on LBP hazards.*

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- Risk Assessment: A risk assessment must be conducted prior to rehabilitation to find LBP hazards in assisted units, in common areas that service those units, and on exterior surfaces.
- ii. There are four options in determining the hazards of LBP:
- In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces to be disturbed or replaced and *use interim controls*. A risk assessment is still required.
 - In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces. The grantee must *perform standard treatments*. A risk assessment is not required.
 - When using interim controls, the grantee is permitted to conduct paint testing on all non-intact paint surfaces. If no LBP is detected, then no interim controls are required on that surface. A risk assessment is still required.
 - The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead levels that exceed interior lead dust standards, then a risk assessment must be conducted.
- iii. Lead Hazard Reduction: If LBP or LBP hazards are detected during the evaluations on interior surfaces in the dwelling units, and the common areas that service those units or on exterior surfaces to be disturbed by rehabilitation, interim controls must be implemented to reduce LBP hazards. See options above for exemptions.
- iv. Notice is required.
- v. Clearance is required.
- c) Rehabilitation Projects Over \$25,000 Per Unit
- i. There are two requirements for the Lead Hazard Evaluation:
- Paint testing must be conducted to identify lead based paint on deteriorated painted surfaces or surfaces that will be disturbed or replaced.
 - A risk assessment must be conducted prior to rehabilitation to find LBP hazards in assisted units, in common areas that service those units, and on exterior surfaces, or grantees may assume that LBP hazards exist.
- ii. There are three options in the Lead Hazard Evaluation:
- In lieu of paint testing, the grantee is permitted to presume that LBP hazards exist on all painted surfaces to be disturbed or replaced and abate these surfaces.
 - In lieu of paint testing, the grantee is permitted to assume that LBP or LBP hazards are present on all painted surfaces. Abatement is required on these surfaces. In such cases, evaluation is not required.

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- The grantee is permitted to conduct a lead hazard screen instead of conducting a risk assessment. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates that lead is present, then a risk assessment must be conducted.
- iii. *Lead Hazard Reduction: If LBP hazards are detected during the evaluations on interior surfaces in the dwelling units and the common areas that service those units or on exterior surfaces, including soil, to be disturbed by rehabilitation, abatement must be completed to permanently reduce LBP hazards.*

If LBP hazards are detected on the exterior surfaces that are not disturbed by rehabilitation during the risk assessment, interim controls may be completed instead of abatement to reduce these hazards.
- iv. *Noticing is required.*
- v. *Clearance is required.*

2) **Calculating the Level of Federal Rehabilitation Assistance (24 Cfr 35.930)**

The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of Federal Rehabilitation Assistance (FRA) projected for each project. The FRA breaks up into three categories:

- FRA of up to and including \$5,000 per unit,
- FRA of more than \$5,000 per unit, up to and including \$25,000,
- FRA of more than \$25,000 per unit.

The FRA is determined by comparing the per unit rehabilitation *hard costs* and the overall per unit *Federal Assistance*. The lower of these calculations is used as the FRA amount.

Hard Costs: Rehabilitation hard costs are calculated using the actual costs associated with the physical development of a unit, regardless of the source of these funds. These do not include soft costs, such as administration, relocation, environmental review, and acquisition costs. Soft costs include financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting fees, appraisals, and architectural and engineering fees.

Federal Assistance: Federal Assistance is determined by tabulating all Federal funds provided to the project for housing assistance. This also includes funds from program income, but excludes funding such as low-income housing tax credit funds (LIHTC) or non-Federal Home Program match funds which are not consider housing assistance.

For determining which level is used in multiple family units to be rehabilitated, an average is used. See 24 CFR 35.915 and HUD's April 2001 Interpretive Guidance for specific details.

3) **Intent: Abatement, Rehabilitation Or Weatherization**

Pursuant to a joint letter from HUD and EPA, dated April 19, 2002, jurisdictions have an additional option when rehabilitating dwellings in which LBP may be present. This provision impacts dwellings below the \$25,000 Federal rehabilitation assistance category.

If a jurisdiction's "intent" is to rehabilitate or weatherize a dwelling without mitigating any LBP hazards, then it is not required to perform interim controls in *the area to be rehabilitated*. *Intent* is shown in the work write up. If only rehabilitation aspects are included in the write up, then the

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intent is to rehabilitate and not mitigate LBP hazards. However, “work safe” practices must still be used. If LBP mitigation measures are included in the work write up, then the *intent* is to mitigate LBP hazards, and all usual mitigation rules apply.

Additionally, if your intent is to abate LBP hazards, then you must follow the abatement worker rules as indicated in the LBP rehabilitation matrix, regardless of the hard cost level of your project.

4) **Construction Waste**

According to a January 23, 2001 EPA Policy Guidance letter, #2001-02, “...all wastes generated from lead hazard control activities at residential properties are household wastes which are excluded from the hazardous waste requirements of the Resource Conservation and Recover Act. As a result, residential LBP waste may be discarded in a municipal solid waste landfill or combustor, but not dumped nor open-burned. Certain LBP waste (such as large quantities of concentrated waste—paint chips, dust, or sludge) from residential de-leading may be subject to more stringent State, local, and/or tribal requirements.” As a result of this guidance, check with your local waste site to determine how they want to deal with the waste being generated from your LBP mitigation activities.

J. DISCLOSURES AND NOTICES (24 CFR 35.92 and 24 CFR 35.125)

1) **Disclosures**

Notification is required on all rehabilitation and first time homebuyer activities, regardless of the level of assistance.

- *Lead Hazard Information Pamphlet: Residents and purchasers of a residential property must receive a copy of the EPA/HUD/Consumer Product Safety Commission Lead Hazard Information Pamphlet, “How to Protect your Family from Lead in Your Home.” Have the recipient acknowledge receipt of this pamphlet in writing and retain this acknowledgment in the rehabilitation files.*
- *Disclosure of LBP and Hazards: Property owners must provide purchasers and lessees with available information or knowledge regarding the presence of LBP and hazards prior to selling or leasing a residence. In the contract or lease, sellers and leasers of pre-1978 housing must include disclosure and acknowledgement language and a warning statement about the dangers of LBP. Sellers must allow purchasers 10 days to inspect the dwelling for LBP or lead based paint hazards. The appropriate contractual addendum on this waiting period must be part of the contract documents. See Matrices and Checklists Section in this chapter for sample language.*

2) **Notices**

- *Paint Testing, Lead Hazard Evaluation, Visual Assessment, or Presumption: Use DHS form 8552. When an evaluation results in findings of LBP hazards or if a presumption of LBP hazards is made, then contractors must provide to the residents and post notice no later than 15 days after this report has been received. These notices shall be posted for four weeks.*

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- Abatement: Use DHS form 8551, Abatement of Lead Hazards Notification in conjunction with DHS form 8552.
- Clearance: Use DHS form 8552. *Notice of Lead Hazard Reduction Activity*: When lead hazard reduction activities have been completed (clearance has been achieved), a contractor must provide to the residents or post a notice of these lead hazard reduction activities no later than 15 days after completion. The notices shall be updated if additional work is required. Any failed clearances must be described in the notice. These notices shall be posted for four weeks.
- Availability of Notices: Notices of evaluation, presumption, and hazard reduction shall:
 - Be of a size and type easily read by occupants.
 - To the extent practicable, be made available upon request in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).
 - Be provided in the occupants' primary language or in the language of the occupants' contract or lease.
 - Be provided to the occupants by posting and maintaining it in centrally located common areas and distributing it to any dwelling unit, if necessary, because the head of household is a person with a known disability.
 - Be distributed to each occupied dwelling affected by the evaluation. If the notice is for a lead hazard in a common area that is used by those in the dwelling unit, the occupants of the dwelling unit shall also receive notice.

K. ACQUISITION AND SUPPORT SERVICES (24 CFR 35.1000)

The lead-based paint requirements for acquisition, leasing, support services or operations is found in 24 CFR Part 35, Subpart K.

1) Acquisition

These regulations are intended to provide assurances that the LBP paint in homes purchased with CDBG funds have been stabilized, and that the unit is "lead safe" when it is occupied by the assisted household. Key requirements for LBP in Homebuyer Assistance are LBP hazard evaluation, treatment, and clearance. The following is required to identify deteriorated paint in homes:

- Visual Assessment: An inspection of all interior painted surfaces, including common areas such as hallways, laundry rooms or garages, and exterior surfaces of the building in which the dwelling unit is located must be conducted to identify deteriorated paint. Notification is only required if LBP hazards are identified.

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- Paint Stabilization: All deteriorated paint surfaces must be stabilized before the homebuyer moves into the home. If paint testing of a deteriorated surface reveals no LBP, then paint stabilization is not required on that surface.
- Safe Work Practices: The owner/contractor must use safe work practices when conducting paint stabilization. Safe work practices include safe work methods, occupant protection, worksite preparation, and cleanup.
- Clearance: After the completion of work, the home must pass clearance. Clearance must happen before occupancy if the home is vacant or immediately after receipt of Federal assistance for a home currently occupied.
- Costs: In order to provide maximum flexibility, the party responsible for paying for lead hazard evaluation and reduction in homebuyer programs depends upon program design and local requirements. Costs may be borne by the administering agency, the seller, the homebuyer, or a combination of the preceding.
- Notification: The notification process is the same as for rehabilitation activities.

2) Support Services and Operations

Support Services and Operations programs that assist in buying, renting, improving, operating or maintaining housing are covered by these regulations. Programs that provide services, such as medical care, education, or food service are not considered housing assistance and are not covered by the regulations. However, HUD recommends that efforts be made to assure that facilities providing these types of support services are lead-safe, if they are frequented by children less than 6 years of age.

3) Exemptions

If the housing assistance being provided is for less than 100 days, the assistance is exempt. For example, if a transitional housing unit that does not meet the definition of a zero-bedroom exemption, provides housing to several families for no more than 100 days, it is exempt from the provisions of Subpart K. The 100-day time limit applies to the dwelling, not the individuals or families.

L. RECORDKEEPING

Notices, evaluation, clearance and abatement reports must be kept at least three years and must be made available for Department review.

Records must be kept for at least three years, but it is recommended that lead-based paint records be kept indefinitely. The following records should be kept:

- Information on age of property, age of children living at property, existing information on Children's blood lead levels, existing information on lead-based paint.
- Inspection report or documentation of Visual Assessment.
- Disclosure statement.

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- Clearance report.
- All notifications.
- Documentation of required certifications or training.
- Documentation indicating receipt of the pamphlet.

M. QUESTIONS

Q1. How does sweat equity come into play when a homeowner opts to paint the house as part of the rehabilitation? What is the homeowner's responsibility in minimizing LBP hazards?

A. The homeowner must receive training on and use work safe requirements, including containment, practices, and clearance. Contact HUD's Lead Based Paint Training Specialist, Rachael Riley at (202) 755-1785 x 107 for materials to hold your own work safe course.

Q2. Are there other options to using sweat equity without the owners taking classes?

A. The options are: Homeowners performing sweat equity may 1) take the one-day HUD work safe class (or for projects over \$25,000 in hard costs, take the DHS three-day course); 2) work on homes completed after 1/1/78; 3) work on homes that are certified LBP-free or abated (as long as LBP hazards are not created); or 4) only work in cleared areas accessible without exposure to LBP hazards on tasks without disturbing LBP or creating LBP hazards.

Q3. When is abatement required?

A. When the intent is to permanently eliminate the LBP hazard (abate), and when the FRA is over \$25,000.

Q4. When do you have to "work safe?"

A. Always, unless the area to be worked on is less than the de minimis levels.

Q5. How can I get information on certified training?

A. Check out DHS at their website: <http://www.dhs.ca.gov/childlead/html/materials.html> You may also contact the CDBG program at (916) 263-0485 for updated information.

Q6. Do the LBP hazard regulations apply to public service activities?

A. Only to the extent that these services are considered housing assistance, e.g., housing operations assistance.

Q7. Do LBP hazard regulations apply to mixed use activities?

A. Only for the residences and in common use areas served by residents, e.g., exterior areas, entryways, laundry rooms, hallways, etc.

Q8. If a window and frame painted with LBP needs to be removed as part of the rehab, is this a rehab or lead hazard cost?

A. If the component of the rehab would have been done regardless of the LBP, then it is considered a rehab cost.

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Q9. Is LBP an activity delivery or construction cost?

- A. LBP evaluation/clearance costs are the same category as pest control inspections, i.e., you can count them as activity delivery, construction costs and roll them into the loan, grant them, etc. LBP mitigation is a construction cost. These costs can either be grants or loans

Q10. We need a list of certified LBP contractors in our area.

- A. Certified workers, supervisors, inspectors/risk assessors:
www.dhs.ca.gov/childlead/html/GENclist.html

Q11. We need a list of those qualified to work safe (workers only) in our area.

- A. www.leadlisting.org/leadlisting/leadlisting.nsf/RenovatorForViews?OpenForm&CA

Q12. Which certifications are required to address LBP hazards?

- A. It depends upon which level of LBP mitigation is taken. See Housing Rehabilitation or Homebuyer's Assistance matrices in table of contents.

Q13. We need more funding to pay for certified contractor classes. Are any funds available?

- A. No Federal funds are currently available. However, the National Association of Attorneys General has information on its website about work safe trainings to begin in September 2003. Reference: www.naag.org/news/pr-20030512-lead_paint.php

Q14. Who fills out the forms and notices?

- A. For DHS forms, the certified risk assessor/inspector fills out forms #8551 and #8552, except in the case of visual assessments and presumptions. Visual assessments only require the online HUD training while the presumptions are an administrative task and may be filled out by any appropriate jurisdiction official.

Q15. What certifications are required on tribal land?

- A. EPA certification for LBP.

Q16. Does a contractor, certified in another state, still have to take the California DHS certified test to work in State?

- A. Yes. California does not recognize other states' certifications.

Q17. If a city is to purchase a 4-plex and rehabilitate it, do the Housing Acquisition or Housing Rehabilitation LBP rules apply?

- A. In cases of multiple coverage for LBP rules, use the most restrictive rules. In this case, the housing rehabilitation rules would apply.

Q18. In performing a visual assessment on a home for a first time homebuyers program, you find that the home is very old and likely has LBP. In the backyard is an obvious play area that has bare soil. There is no evidence of chipping paint on the ground. Should the bare soil be noted in the visual assessment as a LBP hazard?

- A. We urge a conservative approach and recommend that the area be covered in sod, or re-landscaped to cover the bare dirt.

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N. DEFINITIONS

Abatement: Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "permanent"). Abatement includes the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards.

Bare soil: Soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

Certified: DHS licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision.

Chewable surface: An interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Clearance Examination: An activity conducted following lead-based paint hazard education activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite.

Common Area: A portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

Containment: The physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Dwelling Unit: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

Encapsulation: The application of a covering or coating that acts as a barrier between the lead-based paint and the environment. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "permanent").

Enclosure: The use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "permanent").

Evaluation: A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Federally Rehabilitation Assistance: The amount used to determine which rehabilitation category used to address LBP hazards. This figure is calculated by taking the lower of the total Federal assistance in a dwelling and the total hard costs to rehab the dwelling.

Hazard reduction: Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA vacuum: A vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter.

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Housing for the elderly: Retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more or other age if recognized as elderly by a specific Federal housing assistance program.

Impact Surface: An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Interim Controls: A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Lead-Based Paint: Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-Based Paint Hazard: Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead Hazard Information Pamphlet: “How to Protect Your Child From Lead in Your Home.” The HUD pamphlet used to notice a resident who is about to participate in a LBP activity.

Lead Hazard Reduction Activity: The activity chosen to address the existence of LBP and/or LBP hazards.

Lead Hazard Screen: A limited risk assessment activity that involves paint testing and dust sampling and analysis. If lead hazards are found, then a full risk assessment is required.

Multifamily property: A residential property containing five or more dwelling units.

Noticing: Notifying the occupants (or potential occupants) of a dwelling of LBP related actions or history pertaining to that dwelling. This noticing may take the form of a pamphlet or posted notices regarding LBP hazards found, treated, and cleared in a dwelling.

Paint Stabilization: Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint Testing: The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Permanent: An expected design life of at least 20 years.

Play Area: An area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

Presumption: An administrative decision to presume LBP is present. At times, this presumption may not require a risk assessment.

Risk Assessment: An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint

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hazards.

Risk Assessor/Inspector: This person performs risk assessments and clearance examinations. This person must take and pass the 40 hour Risk Assessor/Inspector class. DHS registration AND testing is required.

Safe Work Practices: A system of working to remove LBP that minimizes spreading LBP dust and debris which would contaminate the workers and residents of a dwelling.

Single Family Property: A residential property containing one through four dwelling units.

Single Room Occupancy (SRO) Housing: Housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-Lead Hazard: Bare soil on residential property that contains excessive amounts of lead.

Standard Treatments: A series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate: The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Supervisor: This person supervises certified and non-certified LBP workers. This person must have taken and passed the 40 hour LBP Supervisor class. DHS registration AND testing is required.

Visual Assessment: Looking for deteriorated paint, visible surface dust, debris and residue which may be a part of a risk assessment or clearance examination. A person must have taken the HUD VA test on the web. www.hud.gov/offices/lead/training/visualassessment/h00100.htm

Worker: There are two types of workers, certified and non-certified.

- Certified: A person who has taken the DHS, 3-day, 24 hour certified LBP certified worker class. While no DHS test is required, DHS registration is required. This person may work on any LBP project, but only under supervision.
- Non-Certified: A person who has taken the HUD 1 day, 8 hour "Work Safe" class. This worker may not work on abatement projects.

Zero-Bedroom Dwelling: Any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

O. MATRICES AND CHECKLISTS

CDBG LBP Housing Rehabilitation Matrix

		0 → \$5,000	\$5,001 → \$25,000	\$25,001+	
Lead Hazard Evaluation	Type	Paint Testing on surfaces affected by rehabilitation			
		No Risk Assessment Required	In addition to Paint Testing, Risk Assessment (RA)		
	Cert. Required	DHS certified RA/Inspector			
<i>Notices/Reports</i>		LBP Pamphlet Renter's LBP Disclosure Form, if applicable Paint testing/Risk Assessment: DHS form 8552 Presumption: CDBG LBP-1 Hazard notification: DHS form 8551 prior to work start Clearance: DHS form 8552 LBP Hazard Reduction Activity: CDBG LBP-1			
Lead Hazard Reduction	<i>Type</i>	Safe work practices	Interim Controls	-Interior/Exterior paint disturbed by HR: Abatement -Exterior paint not disturbed by HR: Interim Controls	
	Certificate Required	Worker	1) Workers (including sweat equity) must be "work safe" trained, and no supervisor required, or 2) Workers supervised by DHS certified Supervisor or 3) Workers have taken DHS certified worker class.	See "Under \$5,000" category.	Int/Ext: 3 Day DHS certified worker required
		Supervisor	See above.	See above.	Ext. w/Interim: See "Under \$5,000" category.
					Int./Ext.: Required
				Ext. w/Interim: Required	
Clearance Required		Yes, but only in the areas of rehab. Use DHS form 8552. Certified Risk Assessor or Project Monitor	Yes. Use DHS form 8552. Certified Risk Assessor or Project Monitor on all clearances		

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CDBG LBP Homebuyers Assistance Matrix

Lead Hazard Evaluation	Type	Visual Assessment
	Level of Cert. Required	HUD Online Test: http://www.hud.gov/offices/lead/training/visualassessment/h00100.htm
<u>D. Notices/ Reports</u>		-Pamphlet -Seller's LBP Disclosure Form -Visual Assessment: CDBG Form LBP-1 -Clearance: DHS form 8552 -Prior to LBP work: Notification DHS 8551 -LBP Hazard Reduction Activity, CDBG LBP-1
Lead Hazard Reduction	<i>Type</i>	Paint Stabilization of each deteriorated paint surface.
	Training required for workers/ supervisor	1) Workers (including sweat equity) must be "work safe" trained, and no supervisor required, or 2) Workers supervised by DHS certified Supervisor, or 3) Workers have taken DHS 3-day certified class.
Clearance Required		Yes. Use DHS form 8552. Certified Risk Assessor or Project Monitor on all clearances

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CDBG LBP Presumptions/Options

By Federal Rehabilitation Assistance Category	
\$0-\$5000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. No RA is required. Use safe work practices.
Over \$5,000 to \$25,000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. RA is required. Use interim controls on hazards revealed by the RA or created by the rehabilitation.
Over \$25,000	In lieu of paint testing on surfaces to be disturbed by the rehabilitation, presume LBP on all surfaces affected by rehabilitation. RA is required. Abate all hazards revealed by the RA or created by the rehabilitation. On external areas not disturbed by the rehabilitation, may use interim controls.

<u>E.</u> <u>F. By Evaluation Type</u>	
Lead Hazard Screen	When RA are required, may use this abbreviated version, lead hazard screen. If LBP hazards are found, then full RA is required.
Paint Testing	When paint stabilization or interim controls, may opt to do paint testing on all surfaces with non intact paint. If no LBP then stabilization/interim controls not required.

<u>G.</u> <u>H. By Mitigation Method</u>	
Interim Controls	When interim controls are required, may presume LBP or LBP hazards exist throughout property and then enact standard treatments on hazards. No RA is required.
Abatement	When abatement is required, may presume that LBP or LBP hazards are present throughout, then abate hazards. No RA is required.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

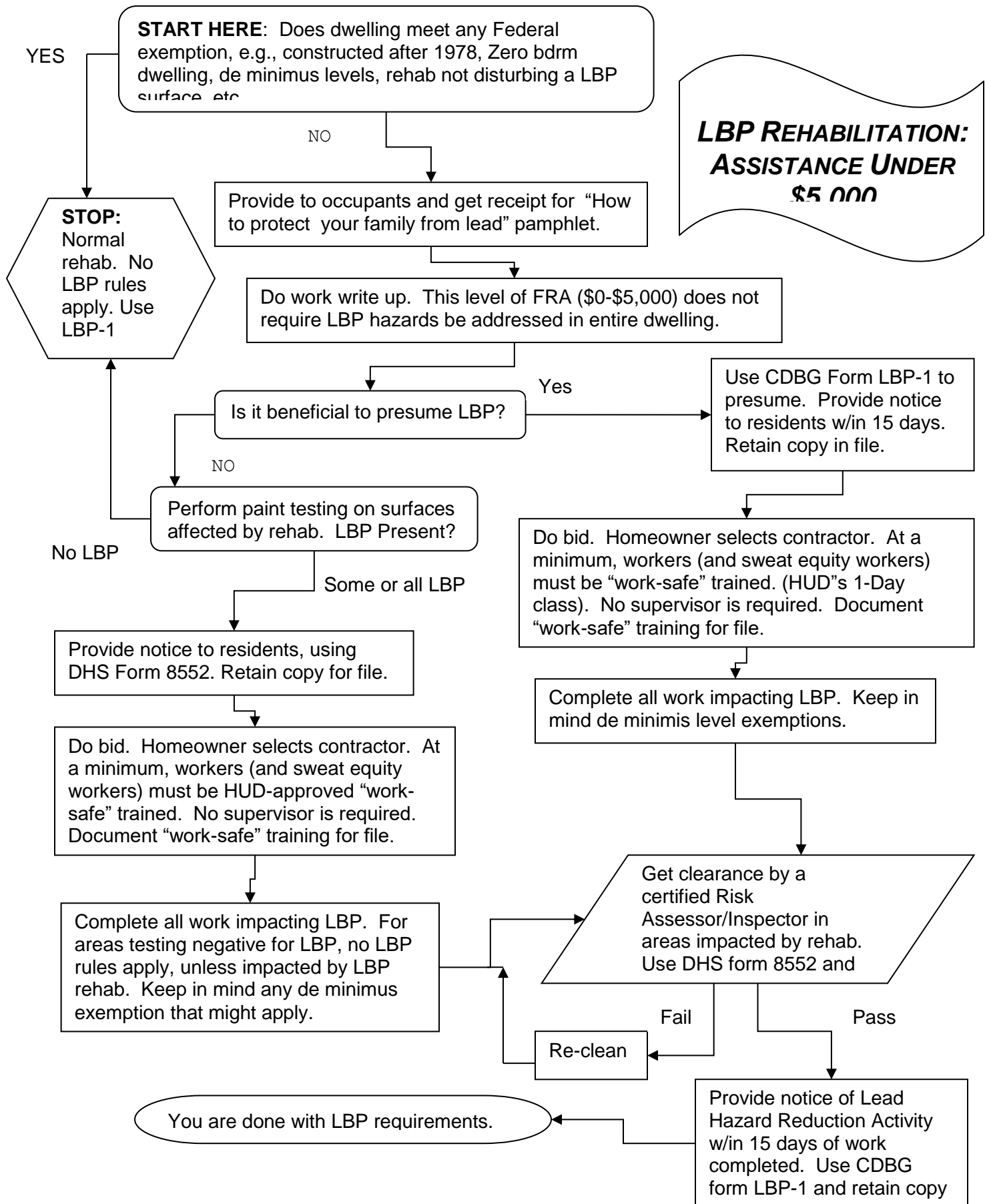
CDBG LBP Checklist for Rehabilitation

Name of Applicant: _____ Date: _____

Address: _____

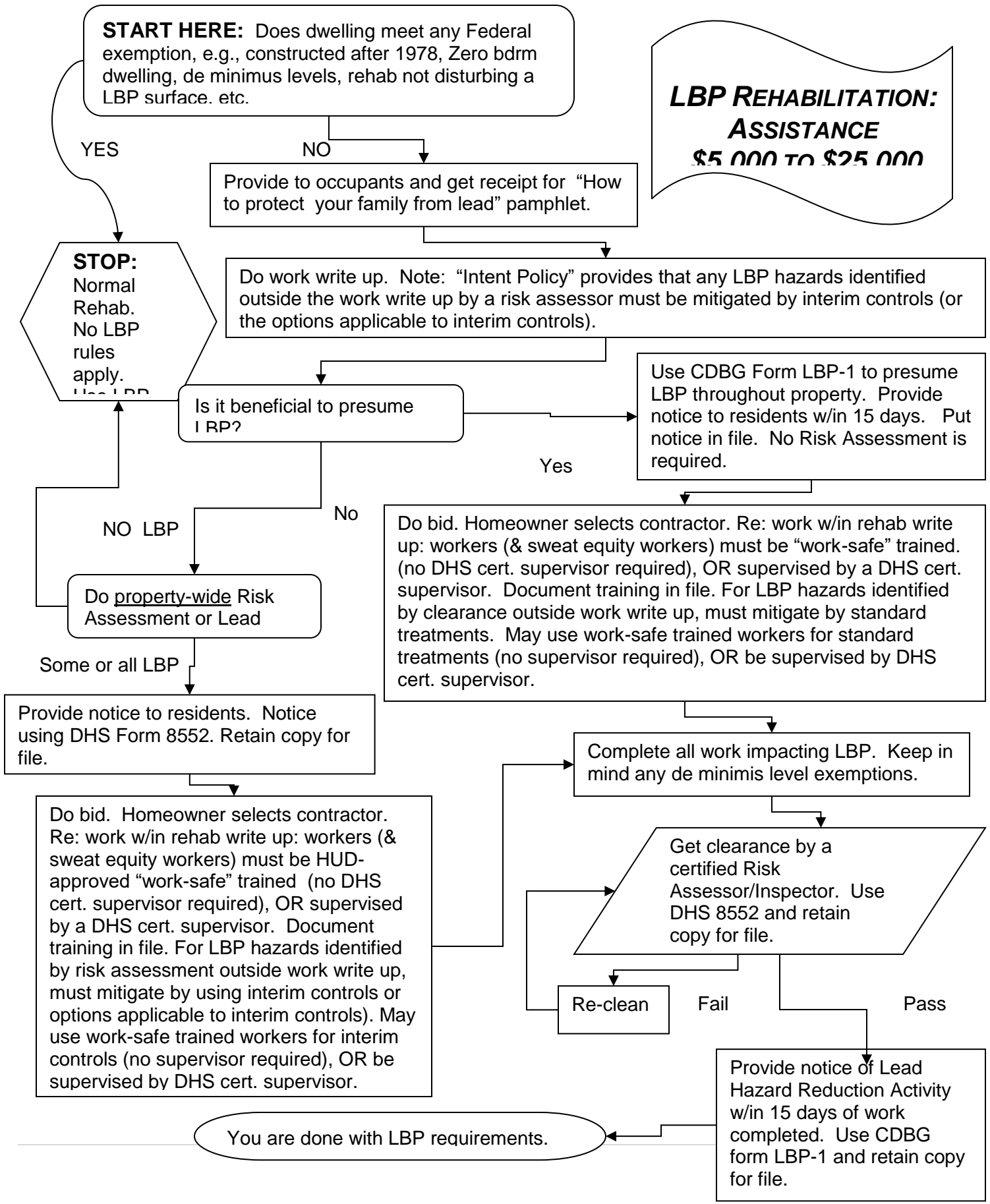
1. If the house was completed prior to 1/1/78, go on to #2. If the house was completed on or after 1/1/78, **STOP**, you are done w/your LBP. Provide proof of age. Use certificate of insurance, final sign off, or occupancy date.
2. Does the dwelling meet any of the exemptions listed in chapter 20 of the Grant Management Manual? If so, **STOP**, you are done w/your LBP requirements. Use LBP-1 to document. List exemption below: _____ . If not, proceed to #3.
3. Provide "How to Protect Your Family From Lead" pamphlet to recipients/occupants and retain proof of receipt. For tenants, use "Renter's Lead-Based Paint Disclosure" form found in Section 19 of this chapter. Use renter form, at a minimum, as long as the RLA is effective.
4. Obtain work write up. **Intent Policy:** Any LBP hazards identified outside work write up subject to mitigation controls required by Federal Rehabilitation Assistance Categories (see p.20-17), and must "work safe" on activities in work write up. Determine if a presumption strategy is beneficial for this dwelling. (see p.20-19) If presuming LBP, notice using Notice of Presumption, CDBG form LBP-1, and no RA required. If RA opted for, go to #5.
5. Procure DHS certified risk assessor/inspector for the RA and obtain proof of certification. Note: May proceed with RA, or proceed with abbreviated evaluation, the Lead Hazard Screen (LHS). LHS is property-wide, not for one portion of the dwelling. If LHS results are negative for LBP, then may begin the rehab w/o LBP concerns. If the LHS results are positive for LBP, then must proceed with an RA. In either case, within 15 days, notice and retain copies of the appropriate notice. Use DHS form 8552.
6. Address any relocation due to LBP work. See GMM, chapter 6.
7. Procure rehab contractor for work write up and use appropriate workers/supervisor (pp.20-17 & 20-20 (a)-(c)). At a minimum, must "work safe."
8. For identified LBP hazards called out in the RA, procure DHS certified LBP contractor and determine which LBP mitigation method(s) to use in the home.
9. Prior to work starting, notice and retain copy of DHS form 8551, Abatement of Lead Hazards Notification, which provides information about LBP work to be done.
10. Have the rehab and LBP work done and obtain proof of training (DHS certification for supervisor and all workers, work safe training, etc.). See p.20-17 & 20-20 (a)-(c).
11. Obtain clearance report, using DHS form 8552, Lead Hazards Evaluation Report (and DHS form 8551, when clearing abatement projects). Clearance report cannot be done by the same business entity that performed any evaluated component. Obtain proof of DHS RA certification.
12. Within 15 days of LBP hazard work being finalized, notice and retain copy of Notice of Hazard Reduction Activity. Use CDBG form LBP-1.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES



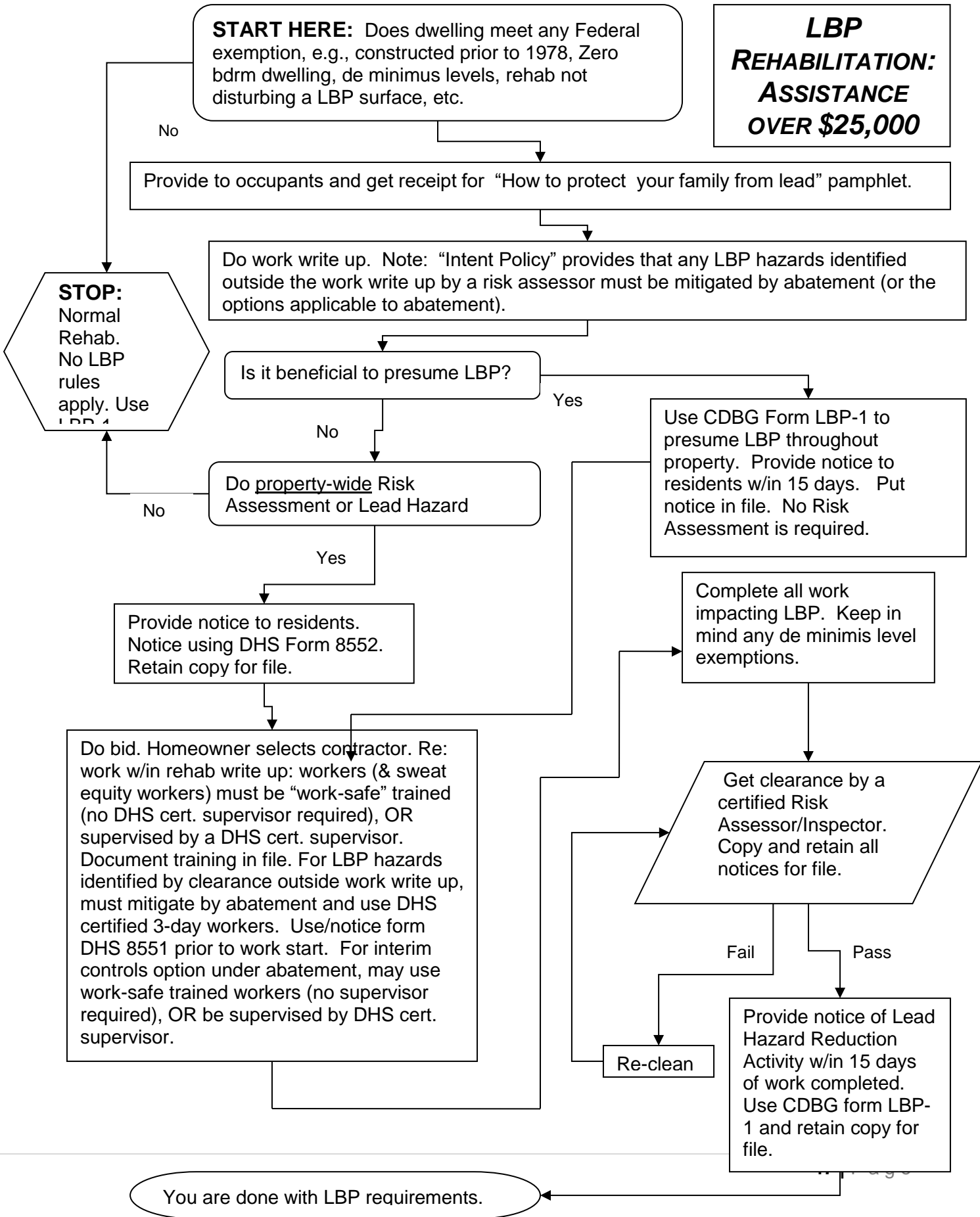
**LBP REHABILITATION:
ASSISTANCE UNDER
\$5 000**

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES



**LBP REHABILITATION:
ASSISTANCE
\$5,000 TO \$25,000**

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES



**LBP
REHABILITATION:
ASSISTANCE
OVER \$25,000**

START HERE: Does dwelling meet any Federal exemption, e.g., constructed prior to 1978, Zero bdrm dwelling, de minimus levels, rehab not disturbing a LBP surface, etc.

Provide to occupants and get receipt for "How to protect your family from lead" pamphlet.

Do work write up. Note: "Intent Policy" provides that any LBP hazards identified outside the work write up by a risk assessor must be mitigated by abatement (or the options applicable to abatement).

Is it beneficial to presume LBP?

STOP:
Normal Rehab.
No LBP rules apply. Use LBP-1

Do property-wide Risk Assessment or Lead Hazard

Use CDBG Form LBP-1 to presume LBP throughout property. Provide notice to residents w/in 15 days. Put notice in file. No Risk Assessment is required.

Provide notice to residents. Notice using DHS Form 8552. Retain copy for file.

Complete all work impacting LBP. Keep in mind any de minimis level exemptions.

Do bid. Homeowner selects contractor. Re: work w/in rehab write up: workers (& sweat equity workers) must be "work-safe" trained (no DHS cert. supervisor required), OR supervised by a DHS cert. supervisor. Document training in file. For LBP hazards identified by clearance outside work write up, must mitigate by abatement and use DHS certified 3-day workers. Use/notice form DHS 8551 prior to work start. For interim controls option under abatement, may use work-safe trained workers (no supervisor required), OR be supervised by DHS cert. supervisor.

Get clearance by a certified Risk Assessor/Inspector. Copy and retain all notices for file.

Re-clean

Provide notice of Lead Hazard Reduction Activity w/in 15 days of work completed. Use CDBG form LBP-1 and retain copy for file.

You are done with LBP requirements.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

CDBG LBP Checklist for Homebuyers Assistance

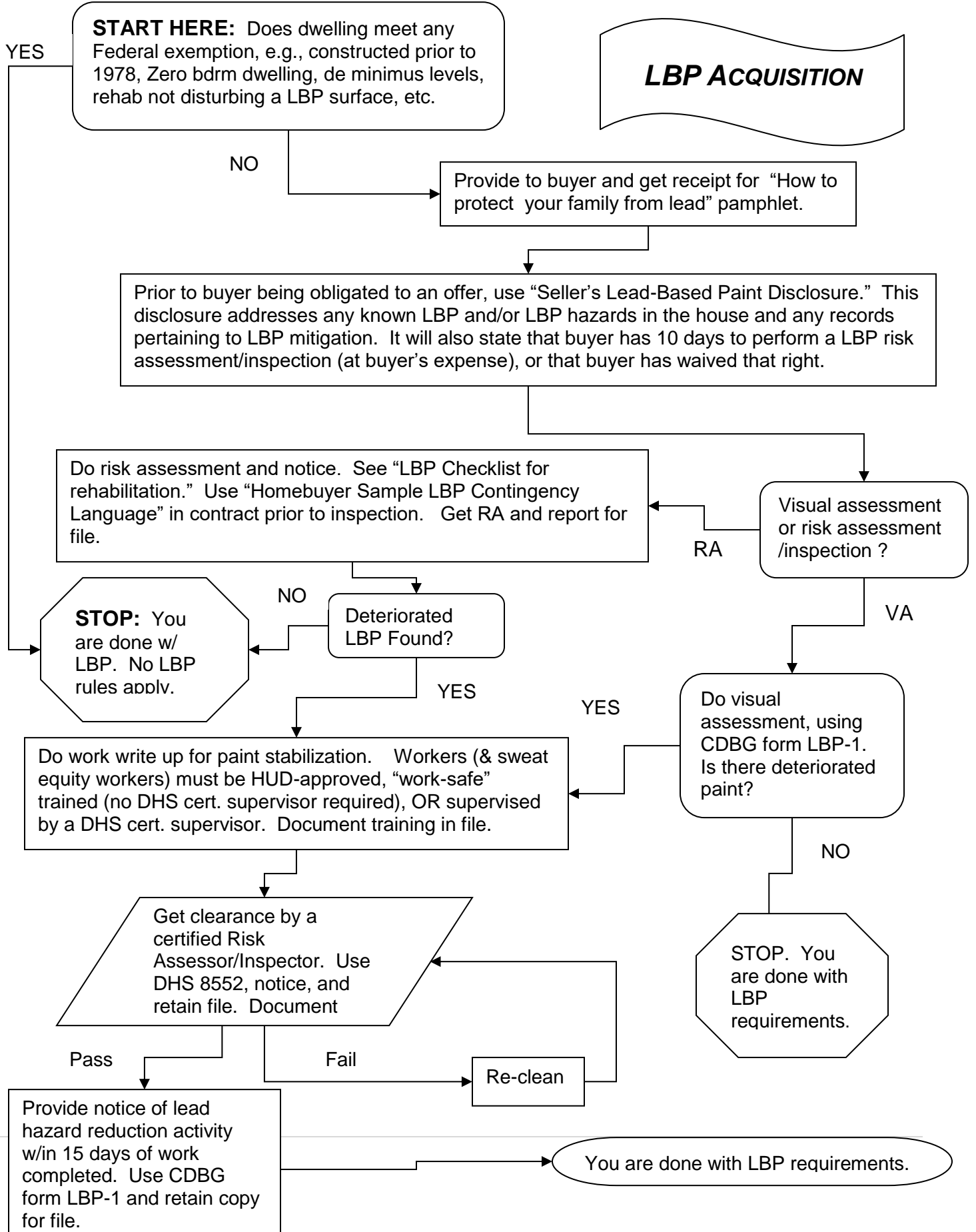
Name of Applicant: _____ Date: _____

Address: _____

1. If the house was completed prior to 1/1/78, go on to #2. If the house was completed on or after 1/1/78, **STOP**, you are done w/your LBP. Provide proof of age. Use certificate of insurance, final sign off, or occupancy date.
2. Does the dwelling meet any of the exemptions listed in chapter 20 of the Grant Management Manual? If yes, **STOP**, you are done w/your LBP requirements. Use LBP-1 to document. List exemption here: _____ . If not, proceed to #3.
3. Provide "How to Protect Your Family From Lead" pamphlet to recipients. Retain signed receipt from recipients/occupants stating that pamphlet was received
4. Prior to the purchaser being obligated to an offer, use the Lead Disclosure Notice that seller provides. This disclosure addresses any known LBP and/or LBP hazards in the house and any records pertaining to LBP mitigation. It will also state that the purchaser has 10 days to perform a LBP inspection, or that purchaser has waived that right. Ensure "Homebuyer Assistance Program Sample LBP Contract Contingency Language" is used in the purchase contract. If buyer waives inspection, sample LBP Contract Contingency Language is not required.
5. Do LBP visual assessment, using CDBG form LBP-1. If no deteriorated paint is found, **STOP**, you are done w/LBP requirements. If deteriorated paint is found, do work write up, and go to #6.
6. Procure DHS certified LBP contractor for paint stabilization. Prior to work being started, post or notice, and retain DHS forms 8551, *Abatement of Lead Hazards Notification*.
7. Obtain proof of certification for supervisor and all workers as required. See p.20-17.
8. Clearance Report, using DHS form 8552. Clearance report cannot be done by the same business entity that performed any evaluated component. Obtain proof of DHS RA certification.
9. Within 15 days of LBP hazard work being finalized, notice and retain copy of Notice of Hazard Reduction Activity. Use CDBG form LBP-1.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

LBP ACQUISITION



MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Renters Lead-Based Paint Disclosure Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a Federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):
- (i) Known lead-based paint and/or lead-based paint hazards are present in the housing. Explain _____.
 - (ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the lessor (check (i) or (ii) below):
- (i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing. List documents _____.
 - (ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

- (c) ___ Lessee has received copies of all information listed above.
- (d) ___ Lessee has received the pamphlet Protect Your Family from Lead in Your Home.

Agent's Acknowledgment (initial)

- (e) ___ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

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Form #: LBP - 2

XVIII. Seller's Lead-Based Paint Disclosure

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
 - (i) Known lead-based paint and/or lead-based paint hazards are present in the housing. Explain _____.
 - (ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
 - (i) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing. List documents: _____.
 - (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

- (c) _____ Purchaser has received copies of all information listed above.
- (d) _____ Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- (e) _____ Purchaser has (check (i) or (ii) below):
 - (i) received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
 - Or
 - (ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

- (f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Homebuyer Assistance Program

Sample Lead-Based Paint Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification. This ending date is: _____. **[Insert date 10 days after contract ratification or a date mutually agreed upon]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.)**

This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report.

The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counteroffer, the Purchaser shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

Seller Name: _____ Date: _____

Purchaser: _____ Date: _____

Property Address: _____

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

Form #: LBP - 1

LEAD-BASED PAINT VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION FORM

Section 1: Background Information			
Property Address:		No LBP found or LBP exempt <input type="checkbox"/>	
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

Section 2: Visual Assessment. Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found. For multi-family housing, list at least the housing unit numbers and common areas and building components (including type of room or space, and the material underneath the paint).	

Section 3: Notice of Presumption. Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint hazards are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption: For multi-family housing, list at least the housing unit numbers and common areas, bare soil locations, dust-lead location, and or building components (including type of room or space, and the materials underneath the paint) of lead-based paint and/or hazards presumed to be present.	

Section 4: Notice of Lead-Based Paint Hazard Reduction Activity. Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types. For multi-family housing, list at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and the types of lead-based paint hazard reduction activities performed at the location listed.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity		
Printed Name:	Signature:	Date:

Section 6: Contact Information		Organization:
Contact Name:	Contact Signature:	
Date:	Address:	Phone:

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

P. DHS FORMS

DHS forms 8551 and 8552 may be downloaded from DHS website at:
<http://www.dhs.ca.gov/childlead/html/GENregs.html>

Q. REFERENCES

- Federal Register, 24 CFR Part 35, et. al. Final Rule
- HUD's lead website at www.hud.gov/offices/lead/.
- Lead Listing's website at www.leadlisting.org, and
- HUD's April 2001 Interpretive Guidance: The HUD Regulation on Controlling LBP Hazards in Housing Receiving Federal Assistance and Federally Owned Housing Being Sold regulations
http://www.hud.gov/offices/lead/leadsaferule/1012qa_2001.pdf

R. DEPARTMENTS ROLE

The Department's CDBG staff will review the grantee and contractor's compliance with the Federal LBP regulations. At least one monitoring of the grantee's program will be completed during the life of the grant. In addition to the monitoring, staff will be available to assist in solving any program problems as they occur.

MONO COUNTY HOUSING REHABILITATION PROGRAM GUIDELINES

S. SUPPORTING MATERIALS

Type	Document	Source
Forms	Lead Hazard Evaluation Report DHS form 8552	http://www.dhs.ca.gov/childlead/html/GENregs.html#Title%2017
	Abatement of Lead Hazards Notification, DHS form 8551	http://www.dhs.ca.gov/childlead/html/GENregs.html#Title%2017
	Lessor's Disclosure Information on LBP	Federal Register Vol. 61.No.45, 3/6/96
	Summary Notice of LBP Risk Assessment	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
	Notice that LBP or LBP Hazards are Presumed to be Present	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
	Summary Notice of Completion of LBP Hazard Reduction Activity	Federal Register, Vol. 64, No. 178, 9/15/99, Rules and Regulations, pg. 50231
Lead Profession als	Index of lead Certified Professionals in California	www.dhs.ca.gov/childlead/html/B40.html
Pamphlets (cover only)	Protect Your Family From Lead in Your Home	www.hud.gov/offices/lead
	Reducing Lead Hazards When Remodeling Your Home	www.epa.gov/opptintr/lead/leadpbed.htm
	Lead in Your Home: A Parent's Reference Guide	www.epa.gov/opptintr/lead/leadpbed.htm
	Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work	www.hud.gov/nea/LBPguide.pdf
Fact Sheet	Federal Requirements for Volunteer Paint and Rehabilitation Programs (March 2000 Fact Sheet)	http://www.hud.gov/lea/FSVPrograms.doc
	HUD 4/19/01 LBP Intent Letter	http://www.hud.gov/utilities/intercept.cfm?/lea/EPA_HUDabatamentletter.pdf
Regulation s	24 CFR 35	http://www.access.gpo.gov/nara/cfr/waisidx_01/24cfr35_01.html
	Interpretive Guidance: 24 CFR 35 -4/16/01-Table of Contents only	http://www.hud.gov/offices/lead
Subsides	Clearance Report Subsidies	http://www.hud.gov/news/release.cfm?content=pr02-022.cfm



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Clerk of the Board

TIME REQUIRED 10 minutes (Board Discussion)

SUBJECT 2017/2018 CSAC Appointments

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Selection from the Board of Supervisors of a member and alternate to serve on the California State Association of Counties (CSAC) Board of Directors for 2017/18.

RECOMMENDED ACTION:

Elect a member of the Board of Supervisors to serve on the CSAC Board of Directors for the 2017/18 Association year beginning on November 28, 2017; also, elect an alternate member.

FISCAL IMPACT:

Fiscal impact limited to cost to attend meetings and conferences, estimated at \$2,700, which is included in the General Fund budget.

CONTACT NAME: Scheereen Dedman

PHONE/EMAIL: x5538 / sdedman@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
Staff Report
CSAC Selection Memo
CSAC Board Roster

History

Time

Who

Approval

10/3/2017 10:24 AM

County Administrative Office

Yes

11/13/2017 3:54 PM

County Counsel

Yes

11/9/2017 12:17 PM

Finance

Yes



Larry Johnston~District One Fred Stump~ District Two Bob Gardner ~ District Three
John Peters ~ District Four Stacy Corless ~ District Five

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5533 • FAX (760) 932-5531
Shannon Kendall, Clerk of the Board

To: Honorable Board of Supervisors

From: Scheereen Dedman, Senior Deputy Clerk

Date: November 21, 2017

Subject

CSAC Board of Directors Member and Alternate for 2017-2018 Association Year.

Recommendation

Elect a member of the Board of Supervisors to serve on the CSAC Board of Directors for the 2017-2018 Association year beginning November 28, 2017. Also, elect an alternate member.

Discussion

Each year the Board of Supervisors elects a member and an alternate to serve on the CSAC Board of Directors. The one-year term of office commences on the first day of the CSAC annual conference. Supervisor Johnston served as the member on the CSAC Board for 2016-2017, and Supervisor Gardner served as the alternate member.

Fiscal

None.



California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814
Phone (916) 327- 7500
Facsimile (916) 321- 5047

September 27, 2017

TO: Chairs, Boards of Supervisors

FROM: Matt Cate, Executive Director

SUBJECT: Selection of CSAC Board of Directors Members

Under provisions of the CSAC Constitution, members of the Board of Directors and alternates are nominated by their respective boards of supervisors and appointed by the Executive Committee to one-year terms of office commencing with the first day of the CSAC annual conference. This year that will be on Tuesday, November 28, 2017. Any member of your Board of Supervisors is eligible for the directorship.

CSAC's Board of Directors holds its first meeting of each year at the association's annual conference. **Thus, it is important that your county has its newly appointed board representative at this first meeting.** Enclosed is a list of current directors, along with a form for use in notifying us of your Board's nomination.

The new Board of Directors will meet at the annual conference, first by caucus (urban, suburban and rural) to nominate CSAC officers and Executive Committee members, and again as a full Board to elect the 2018 Executive Committee and to conduct other business. Details of these meetings will be sent to you at a later date. Please note that under the CSAC Constitution, Executive Committee members are elected from the membership of the Board of Directors.

If you have any questions or need further information, please contact Sue Ronkowski of my staff at 916.327.7500 x508 or e-mail sronkowski@counties.org.

Enclosures

cc: 2017 Board of Directors
Clerks, Board of Supervisors

CALIFORNIA STATE ASSOCIATION OF COUNTIES

Board of Directors

2017

<u>Section</u>	<u>County</u>	<u>Director</u>
U	Alameda County	Scott Haggerty
R	Alpine County	Terry Woodrow
R	Amador County	Richard Forster
S	Butte County	Bill Connelly
R	Calaveras County	Michael Oliveira
R	Colusa County	Kim Dolbow Vann
U	Contra Costa County	John Gioia
R	Del Norte County	Chris Howard
R	El Dorado County	Sue Novasel
U	Fresno County	Buddy Mendes
R	Glenn County	John Viegas
R	Humboldt County	Estelle Fennell
S	Imperial County	Raymond Castillo
R	Inyo County	Jeff Griffiths
S	Kern County	Mick Gleason
R	Kings County	Doug Verboon
R	Lake County	Jim Steele
R	Lassen County	Chris Gallagher
U	Los Angeles County	Mark Ridley-Thomas
R	Madera County	Max Rodriguez
S	Marin County	Damon Connolly
R	Mariposa County	Marshall Long
R	Mendocino County	Carre Brown
S	Merced County	Lee Lor
R	Modoc County	Patricia Cullins
R	Mono County	Larry Johnston
S	Monterey County	Luis Alejo
S	Napa County	Diane Dillon
R	Nevada County	Ed Scofield
U	Orange County	Lisa Bartlett
S	Placer County	Jim Holmes
R	Plumas County	Lori Simpson
U	Riverside County	Chuck Washington

U	Sacramento County	Susan Peters
R	San Benito County	Jaime De La Cruz
U	San Bernardino County	James Ramos
U	San Diego County	Greg Cox
U	San Francisco City & County	Malia Cohen
S	San Joaquin County	Bob Elliott
S	San Luis Obispo County	John Peschong
U	San Mateo County	Carole Groom
S	Santa Barbara County	Das Williams
U	Santa Clara County	Ken Yeager
S	Santa Cruz County	Bruce McPherson
S	Shasta County	Leonard Moty
R	Sierra County	Lee Adams
R	Siskiyou County	Ed Valenzuela
S	Solano County	Erin Hannigan
S	Sonoma County	James Gore
S	Stanislaus County	Vito Chiesa
R	Sutter County	Larry Munger
R	Tehama County	Robert Williams
R	Trinity County	Judy Morris
S	Tulare County	Steve Worthley
R	Tuolumne County	Sherri Brennan
U	Ventura County	Kelly Long
S	Yolo County	Jim Provenza
R	Yuba County	Doug Lofton

President: Keith Carson, Alameda
 First Vice President: Leticia Perez, Kern
 Second Vice President: Virginia Bass, Humboldt
 Immed. Past President: Richard Forster, Amador

SECTION: U=Urban S=Suburban R=Rural



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Economic Development

TIME REQUIRED 10 minutes

PERSONS APPEARING BEFORE THE BOARD Alicia Vennos

SUBJECT Appointments to the Economic Development, Tourism & Film Commission

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Appointment of Wendy Schneider and Sarah Walsh to the Mono County Economic Development, Tourism & Film Commission, to represent District 2 and 3 respectively for a four-year term.

RECOMMENDED ACTION:

Appoint Wendy Schneider and Sarah Walsh to the Mono County Economic Development, Tourism & Film Commission, for a four-year term effective Nov. 21, 2017 to June 30, 2021.

FISCAL IMPACT:

None.

CONTACT NAME: Alicia Vennos

PHONE/EMAIL: 760-924-1743 / avennos@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
<input type="checkbox"/> Staff Report
<input type="checkbox"/> Sarah Walsh Application
<input type="checkbox"/> Wendy Schneider Application

History

Time	Who	Approval
11/16/2017 5:41 AM	County Administrative Office	Yes

11/15/2017 3:24 PM

County Counsel

Yes

11/15/2017 1:30 PM

Finance

Yes



STAFF REPORT

Mono County Board of Supervisors Regular Meeting – November 21, 2017

SUBJECT: Appointment of Wendy Schneider and Sarah Walsh to the Mono County Economic Development, Tourism & Film Commission (EDTFC)

RECOMMENDATION: That the Board consider appointing Ms. Schneider and Ms. Walsh to the Mono County Economic Development, Tourism & Film Commission for a 4-year term beginning November 21, 2017 – June 30, 2021 to fill the vacancies left by the resignation of Andrew Jones, District 3 and Jennifer Roeser, District 2.

BACKGROUND: Wendy Schneider is a full-time resident of Mono County and is employed as the Executive Director of Friends of the Inyo. With a background in practicing law, Ms. Schneider has a wide range of experience working with businesses of all sizes. She also sits on the Board for Mammoth Lakes Trails and Public Access and works closely with the Inyo National Forest, Bureau of Land Management and other local agencies in both Mono and Inyo counties.

Sarah Walsh is the co-founder and CEO of June Lake Brewing, and has been a resident of June Lake since 2013. Her experience in starting and growing a successful business in Mono County from the ground up, as well as her work with non-profits and local community volunteer groups, will be tremendous assets for the Commission.

Both Ms. Schneider and Ms. Walsh have an enthusiastic, genuine passion for the Eastern Sierra and are looking forward to contributing to the county-wide Economic Development goals of the Commission.

FISCAL IMPACT: None

**MONO COUNTY
APPLICATION FOR APPOINTMENT
TO BOARDS/COMMISSIONS/COMMITTEES**

DATE	October 26, 2017
NAME	Sarah Walsh
POSITION APPLIED FOR:	
Economic Development, Tourism and Film Commission	
RESIDENCE ADDRESS	64 S Crawford Ave, #3 June Lake CA 93529
PHONE	858.668.6340
BUSINESS ADDRESS	2740 HWY 158 June Lake CA 93529
PHONE	
OCCUPATION	CEO June Lake Brewing

How did you learn of the opening? Andrew from Silver Lake Resort

Please state briefly any experience of which you feel will be helpful when you serve in this appointment: My family started a small business in June Lake in 2013 and would love to see other small businesses thrive in our community

Other information may be submitted by resume if desired.

Summary of background and skills: I grew up in a military family moving around quite frequently, so am easily adaptable to change. I have worked with many non-profit organizations in San Diego and also understand what it takes to run a business

Professional experience: _____

After College I lived Buenos Aires Argentina working for an
executive coaching firm. Afterwords I joined the Department of
Defense as a Navy Contractor. I am currently the co-founder and
CEO of June Lake Brewing

Education: _____

Recieved a bachelor's degree in International Business from
San Diego State University & La Universiad de Valparaiso en Chile

Professional and/or community organizations: _____

California Craft Brewers Association, The June Lake Womens Club,
and the June Lake Little Loopers

Personal interests and hobbies: _____

I like to hike, play with my baby, and speak Spanish

Have you ever been convicted of a felony, which would disqualify you from appointment? If you are appointed and cannot be bonded as required, your appointment will be revoked. **No.**

If you desire a personal interview or wish to address the Board, you may contact the Board of Supervisor's Office directly at (760) 932-5533.

Please return application to:

Clerk of the Board
County of Mono
P. O. Box 715
Bridgeport, CA 93517



Signature

10/26/2017

Date

**MONO COUNTY
APPLICATION FOR APPOINTMENT
TO BOARDS/COMMISSIONS/COMMITTEES**

DATE
NAME

11/7/17 Wendy Schneider

POSITION APPLIED FOR:

Commission Member Economic Development, Tourism & Film

RESIDENCE
ADDRESS

49 Meadows Ct. Mammoth Lakes CA 93546

PHONE

310-849-3662

BUSINESS
ADDRESS

819 N. Barlow Bishop CA 93546

PHONE

OCCUPATION

Executive Director, Friends of the Inyo

How did you learn of the opening?

Alicia Venno

Please state briefly any experience of which you feel will be helpful when you serve in this appointment:

I am a full time resident of Mono County. In my capacity as Executive Director of FOI, I regularly interact with local business interests. I am knowledgeable regarding their challenges.

Other information may be submitted by resume if desired.

Summary of background and skills:

I am an attorney with extensive experience working with small, medium and large businesses. Further, I am passionate about managing appropriate economic development of Mono County.

Professional experience: Exec. Dir., Friends of the Inyo, April 2017 to present of counsel, Seaforth Shaw, March 2015 to March 2017, Managing Editor, SmartPulse 2009 to 2015

Education: J.D., UChA School of Law, 1995 The College of William & Mary, B.A. Political Science 1992

Professional and/or community organizations: Exec. Dir., Friends of the Inyo April, 2017 to present, Board member, ILTPA, April 2016 to present

Personal interests and hobbies: hiking, skiing, climbing, yoga & meditation

Have you ever been convicted of a felony, which would disqualify you from appointment? If you are appointed and cannot be bonded as required, your appointment will be revoked. NO.

If you desire a personal interview or wish to address the Board, you may contact the Board of Supervisor's Office directly at (760) 932-5533.

Please return application to: Clerk of the Board
County of Mono
P. O. Box 715
Bridgeport, CA 93517

Wendy Scherki
Signature

10/7/17
Date



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: CAO

TIME REQUIRED 15 minutes

PERSONS Leslie Chapman

SUBJECT Comment Letter on Proposed
National Park Fee Increase, and
Resolution in Support of the National
Park Service Legacy Act

**APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Consider comment letter regarding proposed fee increase in certain National Parks, and Resolution R17-____, a Resolution of the Mono County Board of Supervisors in support of the National Park Service Legacy Act of 2017 (S751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System.

RECOMMENDED ACTION:

Authorize Chair to sign one of the two comment letters regarding proposed fee increase in certain National Parks, and approve Resolution R17-____, a Resolution of the Mono County Board of Supervisors in support of the National Park Service Legacy Act of 2017 (S751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System.

FISCAL IMPACT:

None.

CONTACT NAME: Tony Dublino

PHONE/EMAIL: 760.932.5415 / tdublino@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
Staff Report
Draft Resolution
Proposed Comment Version 1

History

Time	Who	Approval
11/16/2017 5:37 AM	County Administrative Office	Yes
11/16/2017 12:09 PM	County Counsel	Yes
11/16/2017 1:02 PM	Finance	Yes



County of Mono

County Administrative Office

Leslie L. Chapman
County Administrative Officer

Tony Dublino
Assistant County Administrative Officer

Dave Butters
Human Resources Director

Jay Sloane
Risk Manager

Date: November 21, 2017

To: Honorable Board of Supervisors

From: Leslie Chapman, CAO

Subject: Mono County Comments on Proposed Fee Increases at National Parks and Proposed Support for the National Park Service Legacy Act

Recommended Action:

1. Approve one of two proposed comment letters regarding the proposed fee increases at National Parks
2. Approve Resolution 17-___, a Resolution of the Mono County Board of Supervisors in support of the National Park Service Legacy Act of 2017 (S751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System.

Fiscal Impact: None at this time.

Discussion: On November 7th, the Board discussed potential comments to a proposed fee increase at 17 of its busiest National Parks, including Yosemite National Park. That discussion was reviewed to determine points of agreement among the Board that have been drafted into two versions of a potential comment letters. The Board can determine which (if either) to submit, or submit as revised during the meeting.

The Board also discussed the possibility of supporting a legislative solution to the infrastructure maintenance backlog, the National Park Service Legacy Act. The attached resolution established such support.

If you have any questions regarding this item, please contact me at (760) 932-5414.

Respectfully submitted,

Leslie Chapman
CAO



R17-__

**A RESOLUTION OF THE MONO COUNTY
BOARD OF SUPERVISORS IN SUPPORT OF
THE NATIONAL PARK SERVICE LEGACY ACT OF 2017 (S.751 AND H.R. 2584)
TO CREATE A RELIABLE, PREDICTABLE STREAM OR RESOURCES
TO ADDRESS DEFERRED MAINTENANCE NEEDS
IN AMERICA'S NATIONAL PARK SYSTEM**

WHEREAS, America's National Park System is a living testament to our citizens' valor and nation's hardships, victories, and traditions as Americans, and has been called "America's Best Idea"; and

WHEREAS, The National Park System preserves the diversity, culture, and heritage of all Americans and serves as a living classroom for future generations; and

WHEREAS, In 2016, the National Park Service celebrated its centennial and currently manages 417 nationally significant sites and an invaluable collection of more than 75,000 natural and cultural assets that span 84 million acres across all 50 states, the District of Columbia, and several United States territories and insular areas; and

WHEREAS, The National Park Service's mission is "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations"; and

WHEREAS, In 2016, 330 million visitors to the National Park System spent more than \$18 billion in the states and local communities adjacent to national parks; and

WHEREAS, In 2016, 42 million visitors to California's national parks spent an estimated \$2 billion in local gateway regions, supporting 28,900 jobs, and \$2.9 billion in economic output in the California economy; and

WHEREAS, The National Park Service has the obligation to preserve our nation's history, promote access to national parks for all citizens, stimulate revenue to sustain itself and nearby communities, educate the public about America's natural, cultural and historical resources, and provide safe facilities and environs to enjoy these resources; and

WHEREAS, The National Park Service estimated a deferred maintenance backlog of nearly \$12 billion, which includes repairs to aging historical structures, trails, sewers, drainage, thousands of miles of roads, bridges, tunnels, and other vital infrastructure; and

WHEREAS, California's national parks have a deferred maintenance backlog of more than \$1.7 billion; and

WHEREAS, It is the responsibility of the Congress of the United States to maintain America's national parks to ensure that our natural places and history are preserved and documented for future generations and for the adjacent communities that rely on the direct and indirect economic benefits generated by visits to national parks; and

WHEREAS, The Congress of the United States is currently considering bipartisan, bicameral legislation (S. 751 and H.R. 2584) called the National Park Service Legacy Act of 2017, which would establish and fund the National Park Service Legacy Restoration Fund to address the maintenance backlog of the National Park Service;



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NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MONO RESOLVES that:
the Board strongly encourages the Congress of the United States to support the National Park Service Legacy Act of 2017 (S. 751 and H.R. 2584) to create a reliable, predictable stream of resources to address deferred maintenance needs in America's National Park System; and

BE IT FURTHER RESOLVED, that the Chief Clerk of the Board transmit copies of this resolution to our state's Senators and our local Representative in the Congress of the United States, and to the author of the bill for appropriate distribution.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2017,
by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Stacy Corless, Chair
Mono County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board

County Counsel



Larry Johnston ~ District One Fred Stump ~ District Two Bob Gardner ~ District Three
John Peters ~ District Four Stacy Corless ~ District Five

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5533 • FAX (760) 932-5531
Shannon Kendall, Clerk of the Board

November 21, 2017

National Park Service
Recreation Fee Program
1849 C Street, NW, Mail Stop: 2346
Washington, DC 20240.

Re: Comments on Proposed Fee Increases

Dear Sirs/Madams:

The County of Mono respectfully submits the following comments on the National Park Service's proposed fee increases.

The County recognizes the severity of the infrastructure maintenance backlog within the National Park System, is acutely aware of the issues within our neighboring Yosemite National Park, and strongly supports federal efforts at addressing this critical problem.

The County understands that additional funds are needed to address this issue, and believes that a fee increase is an appropriate method to provide much needed funding. A fee increase is expected to have impacts, however, and the County believes those potential impacts should be duly analyzed prior to advancing a proposal.

In considering the current proposal, the County wants to understand the potential impacts to visitation, impacts to the economies of our gateway communities, how this proposal will contribute the solution of the infrastructure backlog, and other issues. Understanding these impacts requires a certain level of research and due diligence that does not appear to have been performed (or disseminated) on the current proposal.

Despite the County's empathy and eagerness to support a viable solution that could involve a fee increase, it cannot support the current proposal in the absence of a full understanding of the anticipated impacts and benefits.

The County respectfully requests this additional information and analysis, and looks forward to providing the County's full support of a solution to this critical issue.

In addition to potential fee increases, the County also supports legislative solutions to this issue, and has adopted a resolution of support for the National Park Service Legacy Act (S751/HR2584).

Sincerely,

Stacy Corless, Chair
Mono County Board of Supervisors



Larry Johnston ~ District One Fred Stump ~ District Two Bob Gardner ~ District Three
John Peters ~ District Four Stacy Corless ~ District Five

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5533 • FAX (760) 932-5531
Shannon Kendall, Clerk of the Board

November 21, 2017

National Park Service
Recreation Fee Program
1849 C Street, NW, Mail Stop: 2346
Washington, DC 20240.

Re: Comments on Proposed Fee Increases

Dear Sirs/Madams:

The County of Mono respectfully submits the following comments on the National Park Service's proposed fee increases.

The County recognizes the severity of the infrastructure maintenance backlog within the National Park System, is acutely aware of the issues within our neighboring Yosemite National Park, and strongly supports federal efforts at addressing this critical problem.

The County understands that additional funds are needed to address this issue, and believes that a fee increase may be an appropriate method to generate much needed funding. At the same time, tourism is Mono County's most significant economic driver and the County anticipates that a fee increase, especially one of this magnitude, can be expected to have impacts on local visitation. The County's Economic Development and Tourism Commission has expressed serious concerns that the proposal may have significant economic impacts to our gateway communities, and there does not appear to be any information to alleviate or counter those concerns. The County firmly believes those potential impacts must be duly analyzed prior to advancing a proposal.

In considering the current proposal, the County requires more edification and clarification on the potential impacts to visitation, impacts to the economies of our gateway communities, how precisely this proposal will contribute to the solution of the infrastructure backlog, the strategy behind the fee matrix, and other background data and research. Understanding these impacts requires a certain level of research and due diligence that does not appear to have been performed (or disseminated) on the current proposal.

The proposal also appears inconsistent with the mission of the NPS Office of Relevancy, Diversity and Inclusion and is likely to have a disproportionate effect on visitation from citizens of lower socio-economic status. Another area of immediate concern is that due to the trans-

sierra nature of Yosemite's Tioga Pass, many motorists are using this route as an east-west passage across the Sierra, but are nonetheless subject to the fee.

Despite the County's empathy and eagerness to support a viable solution which could potentially include a fee increase, it cannot support the current proposal in the absence of a full understanding of the anticipated impacts, unintended consequences, benefits and drawbacks.

The County respectfully requests that this additional information and analysis be provided prior to increasing fees. With better understanding of the broader strategic plan behind the proposed fee increase, Mono County looks forward to providing full support of a solution to this critical issue.

In addition to potential fee increases, the County also supports legislative solutions to this issue, and has adopted a resolution of support for the National Park Service Legacy Act (S751/HR2584).

Sincerely,

Stacy Corless, Chair
Mono County Board of Supervisors



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

TIME REQUIRED

SUBJECT Closed Session--Human Resources

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Stacey Simon, Leslie Chapman, Dave Butters, Janet Dutcher, and Anne Larsen. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

RECOMMENDED ACTION:

FISCAL IMPACT:

CONTACT NAME:

PHONE/EMAIL: /

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
No Attachments Available

History

Time

Who

Approval



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: County Counsel

TIME REQUIRED

SUBJECT Closed Session -- Exposure to
Litigation

**PERSONS
APPEARING
BEFORE THE
BOARD**

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code section 54956.9. Number of potential cases: one.

RECOMMENDED ACTION:

FISCAL IMPACT:

CONTACT NAME: Stacey Simon

PHONE/EMAIL: X1704 / ssimon@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

<p>Click to download</p> <p>No Attachments Available</p>
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History

Time	Who	Approval
11/16/2017 5:37 AM	County Administrative Office	Yes
11/15/2017 3:24 PM	County Counsel	Yes
11/15/2017 1:54 PM	Finance	Yes



**OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS**

REGULAR AGENDA REQUEST

Print

MEETING DATE November 21, 2017

Departments: Community Development

TIME REQUIRED PUBLIC HEARING - 1:00 p.m. (45 minutes)

PERSONS APPEARING BEFORE THE BOARD Michael Draper

SUBJECT PUBLIC HEARING: Request to Extend Temporary Moratorium on all Commercial Cannabis Activities in the Unincorporated Area of Mono County for One Year

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Public hearing regarding request for approval of interim ordinance No. 17-__ of the Mono County Board of Supervisors extending the temporary moratorium prohibiting commercial medical and recreational cannabis activities, including commercial cultivation, distribution, transportation, delivery, storage, manufacturing, processing, provision or sale of cannabis products in the unincorporated area of Mono County established by Mono County Ordinance 16-11.

RECOMMENDED ACTION:

Conduct public hearing. Consider and potentially adopt proposed ORD17-___, Extending the temporary moratorium prohibiting commercial medical and recreational cannabis activities, including commercial cultivation, distribution, transportation, delivery, storage, manufacturing, processing, provision or sale of cannabis products in the unincorporated area of Mono County established by Mono County Ordinance 16-11. Provide any desired direction to staff.

FISCAL IMPACT:

None at this time.

CONTACT NAME: Michael Draper

PHONE/EMAIL: 760-924-1805 / mdraper@mono.ca.gov

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download
Staff report (ss ws)
Ordinance

History

Time	Who	Approval
11/16/2017 5:36 AM	County Administrative Office	Yes
11/14/2017 3:25 PM	County Counsel	Yes
11/14/2017 1:27 PM	Finance	Yes

Mono County Community Development Department

PO Box 347
Mammoth Lakes, CA 93546
760.924.1800, fax 924.1801
commdev@mono.ca.gov

PO Box 8
Bridgeport, CA 93517
760.932.5420, fax 932.5431
www.monocounty.ca.gov

November 21, 2017

To: Board of Supervisors

From: Michael Draper, CDD Planning Analyst
Wendy Sugimura, CDD Senior Analyst

Subject: Extension of Temporary Moratorium on Commercial Cannabis Activities

RECOMMENDED ACTION

Following public hearing, adopt interim ordinance (Attachment 1) extending the temporary moratorium prohibiting commercial, medical and recreational cannabis activities in the unincorporated area of Mono County; and provide any desired direction to staff.

FISCAL IMPACT

No impact to general fund.

DISCUSSION

The Board is being asked to consider an extension of the urgency moratorium adopted on December 13, 2016, and first extended on January 17, 2017. The current moratorium expires December 2, 2017. An extension would continue the temporary prohibition of commercial, medical and recreational marijuana activities in the unincorporated area of Mono County, but will not affect the ability of an individual or a caretaker to engage in medical marijuana activities authorized under the prior Compassionate Use Act (Proposition 215) and The Medical Marijuana Program Act (SB 420) commencing with Section 11362.7 of the California Health and Safety Code. The moratorium also does not affect an individual's right to engage in cultivation of 6 or fewer plants.

Current law explicitly authorizes the County to prohibit, regulate and/or license commercial cannabis activity within its local jurisdictions as well as, in the case of commercial recreational activities, impose certain local sales and use taxes subject to local voter approval.

By law, the maximum amount of time allowed for a second extension is one year. Therefore, the current moratorium may be extended to November 21, 2018. The Board does have the ability to terminate the moratorium at an earlier date. Without further continuation, Ordinance 17-02 would expire on December 2, even though regulations governing commercial cannabis operations within Mono County have not been established.

State regulations were previously expected to have been released by now and, accordingly, local regulations would have been proposed for consideration by the Board before the end of the year. A delay in the issuance of State regulations has resulted in a delay to the development of those proposed local regulations. A "frequently asked questions" (FAQs) document (Attachment 2) describes the benefits of coordinating local requirements with State regulations and includes conceptual timeframes for implementing land use regulations. Please note that some of the dates have changed, and the Board items related to discussing timing refinements and considering General Plan policy adoption has been delayed to December 5 due to expected absences at the Nov. 21 meeting.

Despite the State's delayed regulations, staff continues to pursue development of local cannabis regulations for possible adoption by the Board, and though the timeframe for implementation remains a moving target, staff is forging ahead. Most recently, the Planning Commission recommended the adoption of General Plan policies to establish the County's policy framework, and the Board of Supervisors will consider approving the recommendation on December 5, 2017. Final preparation of land use and development regulations specific to projects and operations will continue, and could be expected for Board consideration within 3-4 months of the release of State regulations.

ATTACHMENTS

1. Interim Ordinance
2. Mono County Cannabis Regulations FAQs



ORDINANCE NO. ORD17-__

**AN INTERIM ORDINANCE OF THE MONO COUNTY BOARD OF SUPERVISORS
EXTENDING THE TEMPORARY MORATORIUM PROHIBITING COMMERCIAL
MEDICAL AND RECREATIONAL CANNABIS ACTIVITIES, INCLUDING
COMMERCIAL CULTIVATION, DISTRIBUTION, TRANSPORTATION,
DELIVERY, STORAGE, MANUFACTURING, PROCESSING, PROVISION
OR SALE OF CANNABIS PRODUCTS IN THE UNINCORPORATED
AREA OF MONO COUNTY ESTABLISHED BY
MONO COUNTY ORDINANCE 16-11**

WHEREAS, Government Code section 65858 authorizes the adoption of an interim ordinance as an urgency measure to prohibit any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Board of Supervisors, planning commission or planning department is considering or studying or intends to study within a reasonable time, when necessary to protect the public safety, health, and welfare; and

WHEREAS, The Compassionate Use Act of 1996 (CUA) was approved by California voters as Proposition 215. The CUA amended the Health & Safety Code to exempt patients and their primary caregivers from criminal prosecution for possession and cultivation of cannabis, provided that the cannabis was cultivated and used for personal medical purposes, on the recommendation of a physician; and

WHEREAS, The Medical Marijuana Program Act (SB 420) took effect January 1, 2004, and added Article 2.5 (commencing with Section 11362.7) to the Health and Safety Code. SB 420 served to clarify the scope and application of the CUA by establishing California's medical cannabis program, which sets forth guidelines regarding how much medical cannabis patients may grow and possess without being subject to arrest and implements a voluntary patient identification card program and other provisions to protect patients and their caregivers; and

WHEREAS, The Medical Marijuana Regulation and Safety Act (MMRSA), consisting of three bills: AB 266, AB 243 and SB 643, went into effect on January 1, 2016. This law created a State of California Bureau of Medical Marijuana Regulation (BMMR) and provides for a dual licensing scheme for "commercial cannabis activity," related to medical cannabis, including commercial cultivation, distribution, manufacture, testing, processing, storing, transporting, delivery and sale of cannabis, also known as cannabis. The MMRSA preserved the authority of cities and counties to prohibit, regulate and/or license commercial cannabis activity within their local jurisdictions; and

1 **WHEREAS**, California Proposition 64, the California Marijuana Legalization Initiative
2 (Adult Use of Marijuana Act or AUMA), legalizes recreational use of cannabis in California, for
3 those over the age of 21 and was voted into law on November 8, 2016. AUMA provides for
4 regulatory enactment of a state licensing, regulation and enforcement scheme for recreational
5 cannabis use and allows local jurisdictions to ban or regulate recreational cannabis-related business
6 and outdoor cultivation as well as impose certain sales and use taxes, subject to local voter
7 approval. AUMA also allows local jurisdictions to regulate, but not to ban, the indoor cultivation
8 of cannabis for recreational use; and

9 **WHEREAS**, the laws governing commercial cannabis changed in June 2017 with the
10 passing of Senate Bill 94, which effectively merged Proposition 64 and MMRSA into one
11 regulatory system that is now known as the Medical and Adult-Use Cannabis Regulation and Safety
12 Act (MAUCRSA); and to date, the State has not released its licensing regulations for the various
13 commercial activities permitted under current law, which regulations are a crucial component to
14 commercial cannabis operations at the State level and will, in turn, substantially inform the policies
15 that are ultimately implemented in Mono County; and

16 **WHEREAS**, following these changes to State law, the County has received an increased
17 number of inquiries regarding commercial cannabis cultivation and related activities in the
18 unincorporated area of Mono County, which inquiries reflect a lack of understanding of the
19 continued illegality of these activities; and

20 **WHEREAS**, MAUCRSA provides that the activities authorized therein may not occur until
21 the State has enacted regulations governing their implementation; and

22 **WHEREAS**, under MAUCRSA, local governments have been given explicit authority to
23 regulate commercial medical and recreational cannabis activities (as defined below) within their
24 jurisdictions, including enacting licensing requirements, land use restrictions and/or certain local
25 sales and use taxes subject to local voter approval; and

26 **WHEREAS**, the Mono County Board of Supervisors has not had the opportunity to hear
27 adequate public comment or receive comprehensive input from local communities with regard to
28 the imposition of local land use or other regulations and/or taxes, nor to consider the effect of
29 eventual State regulations; and

30 **WHEREAS**, in order to preserve the ability to establish local regulations in the future, as
31 well as preserve the status quo within the unincorporated areas of the County and discourage illegal
32 cannabis activities, while staff and decision makers analyze and consider potential modifications to
33 the General Plan and other local regulations to address these new laws, the Board of Supervisors
34 adopted interim ordinance 16-11 on December 13, 2016, temporarily prohibiting commercial
35 medical and recreational cannabis activities within the unincorporated areas of the County in
36 accordance with Government Code section 65858 and subsequently extended it until December 2,
37 2017 (see Ordinance No. ORD17-02); and

1 **WHEREAS**, the Board now wishes to further extend the restrictions imposed and extended
2 by ORD16-11 and ORD17-02, respectively, for up to one year until December 2, 2018, unless
3 sooner terminated by this Board;

4 **NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF
5 MONO FINDS AND ORDAINS THAT:**

6 **SECTION ONE:** There is a continuing current and immediate threat to the public health,
7 safety and welfare as a result of newly enacted State laws within the unincorporated areas of the
8 County for the reasons set forth above, and additionally as follows:

- 9 A. Mandatory State regulations governing commercial cannabis activities under
10 MAUCRSA have not yet been developed or implemented; and
- 11 B. Commercial cannabis activities remain illegal until such regulations are in place,
12 notwithstanding their apparent statutory authorization; and
- 13 C. There is a lack of understanding among members of the public regarding the current
14 legality of commercial cannabis activities; and
- 15 D. This lack of understanding is likely to result in an increase in illegal commercial
16 cannabis activities within the unincorporated areas of the County; and
- 17 E. Such illegal activity will require law enforcement action which has the potential to
18 endanger the health and safety not only of law enforcement officers themselves, but of
19 the public.

20 **SECTION TWO:** The prohibition of commercial medical cannabis activities described in
21 MAUCRSA, including cultivation, distribution, transportation, delivery, storage, laboratory testing,
22 manufacturing, processing, provision or sales of cannabis products within the unincorporated areas
23 of Mono County initially established by Mono County interim ordinance ORD16-11 and
24 subsequently extended by ORD17-02 is hereby extended for up to one year (until December 2,
25 2018), unless earlier terminated by ordinance of this Board, to allow for the proper study and
26 assessment of public sentiment, State regulation and County land use and regulatory needs as they
27 relate to commercial medical cannabis activities.

28 **SECTION THREE:** During the extended prohibition created by this ordinance, staff shall
identify and analyze the relevant issues associated with various commercial medical cannabis
activities and the impact these activities would have on law enforcement and the community at
large, should commercial activities not be regulated at the local level, and shall develop
recommendations for the Board regarding possible local land use or other regulations governing
their implementation.

SECTION FOUR: This extended prohibition also applies to cannabis produced for
commercial recreational use and activity as it has been combined with commercial medical use
under MAUCRSA.

SECTION FIVE: This extended prohibition does not affect nor apply to those individuals
who are currently engaging in medical cannabis cultivation as a primary caregiver (as defined in

1 Health and Safety Code section 11362.765) and permissible under the prior Compassionate Use
2 Act adopted in 1996 or the Medical Marijuana Program Act of 2004, or other, legal, non-
3 commercial cannabis-related uses and activities that do not require a State license. This
4 moratorium will also not affect an individual's right to engage in indoor cultivation of 6 or fewer
plants, though outdoor cultivation will be prohibited.

5 **SECTION SIX:** This ordinance shall become effective upon adoption as an urgency
6 measure pursuant to Government Code sections 65858 and 25123 and shall remain in effect, unless
7 extended as allowed by law, or earlier terminated, for one year (until December 2, 2018). The
8 Clerk of the Board of Supervisors shall post this ordinance and also publish it or a summary thereof
in the manner prescribed by Government Code section 25124 no later than 15 days after the date of
its adoption.

9 **PASSED, APPROVED and ADOPTED** this _____ day of _____, 2017,
by the following vote, to wit:

- 10 **AYES:**
11 **NOES:**
12 **ABSENT:**
13 **ABSTAIN:**

14 _____
15 Stacy Corless, Chair
Mono County Board of Supervisors

17 **ATTEST:** **APPROVED AS TO FORM:**

18 _____
19 Clerk of the Board

_____ County Counsel

20
21
22
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28

Mono County Cannabis Regulations

FAQ

As of November 2, 2017

What is the current timeline for cannabis regulations?

To date, the State has not released its licensing regulations for the various commercial activities permitted under current law. These regulations are a crucial component to commercial cannabis operations at the State level and in turn will substantially inform the policies that are ultimately implemented at the local levels.

Earlier this year, State regulations were expected to have been released by this point in time, and in which case local land use regulations would be adopted before the end of the year. Unfortunately, that is not the case, and the State is now anticipating regulations to be released in late November.

Despite the State's delayed regulations, the County continues to pursue development of local cannabis regulations for adoption, and though the timeframe for implementation remains a moving target, the County is forging ahead. Most recently, the Planning Commission has recommended the adoption of General Plan policies to establish the County's policy framework, and the Board of Supervisors will consider approving the recommendation on November 21, 2017. Final development of land use and development regulations specific to projects and operations will continue, and could be expected within 3-4 months of the release of State regulations.

Other programs and approvals that may influence the availability of a complete regulatory program include adoption of fees, passage of a tax measure, issuance of business licenses, managing banking issues, and permitting by other departments or entities, such as Environmental Health and the Inyo-Mono Agricultural Commissioner.

Why does Mono County want/need to wait for the State Regulations?

The development and adoption of an entirely new regulatory program is complex at best. Cannabis regulation is further complicated by the extent of previous activities, both legal and illegal, as well as continued illegal status under federal law. The Cole Memo sets forth a number of regulatory priorities, which do not exist for other agricultural uses, that localities are advised to follow in order for state and locally legalized cannabis activities to expectantly be considered a low-priority enforcement activity.

The State has created three new departments to handle cannabis regulations, and several existing state agencies are crafting new requirements specific to cannabis activities, including the California Building Standards Commission, Lahontan Regional Water Quality Control Board, and others. These state regulations take precedence over local regulations by the County, and often dictate what the County can regulate, how, and what regulatory gaps need to be filled at the local level.

The most effective and efficient process, therefore, would be for Mono County to develop compatible regulations that are consistent, but not overlapping, with the State's system to the greatest extent

Attachment 2

possible and reasonable. Developing and approving regulations without the knowledge of state-level requirements is likely to result in inconsistencies that could cause expensive and time-consuming changes for business owners and policymakers alike.

The County has gone to great lengths to conduct local outreach and has obtained considerable feedback from its local communities. This feedback has been incorporated into the policies that have thus far been developed, but equally important are the State's regulations, which among other things will include criteria and standards for processing license applications and renewals; testing and packaging requirements and quality assurance guidelines; and guidelines for incorporating cannabis grown on tribal lands into the State-regulated market. Because these guidelines will address some of the more complex and crucial aspects of the commercial cannabis industry, the County believes waiting for the State's regulations will help it to achieve the highest level of consistency and efficacy at the local level.

Can the County develop regulations for only one aspect of cannabis business (such as Cultivation) prior to others?

Possibly. Because there has been an ongoing interest in cultivation, the concept of 'singling out' and promulgating regulations relating to cultivation after the state regulations are issued but in advance of the remaining cannabis regulations, is a possible approach. The Board is expected to consider refining the direction on the timing of the regulatory program at the November 21 meeting.

What type of local permits will cannabis businesses be required to have (not including State Permit)?

For all cannabis business types, the County anticipates requiring a conditional use permit, which also triggers environmental review under the California Environmental Quality Act, and a business license, at a minimum. Depending on the specific operation, other state agencies, local districts, and County departments may also require permits before operations can begin. The complete suite of requirements and permits is not yet known pending state regulations and decisions by other agencies. Even if County land use approvals were obtained today, an operator would still likely be on hold for an undefined period of time with no certainty as to what will be allowed or when, and what the specific requirements will be, pending complete information.

Will there be a special use permit required for cannabis businesses?

For all cannabis business types, Mono County anticipates requiring a conditional use permit (CUP), which also triggers environmental review under the California Environmental Quality Act. Depending on the type of cannabis business, there are likely to be other permits required from the Agricultural Commissioner and/or Environmental Health, along with a business license and potentially other permits or required approvals. CUPs are discretionary permits that are approved by the Planning Commission and can be appealed to the Board of Supervisors, and provide for "conditions of approval" that specify how the activity will be conducted, and how potential impacts will be mitigated.

Will there be a “cannabis business application period?”

The typical County process would allow a new business to apply for permits/licenses upon adoption of the regulations. The County intends to adopt regulations as soon as possible. If so, businesses would theoretically be able to initiate the application process upon approval of the regulations.

How long does it take to obtain a Conditional Use Permit?

The approval timeline for a CUP is dependent upon several variables. Common issues that delay approval are incomplete applications, community controversy, sensitive environmental issues, project complexity, and potential changes to project scope during the process (e.g., a “moving target”). In a best-case scenario, if none of the potential delays above occur and the project qualifies as an exemption under the California Environmental Quality Act, a CUP could be approved within about eight weeks.

Who will pay for the regulation of commercial cannabis?

This has been one of the greatest concerns for counties across the State. There are several examples of local governmental jurisdictions subsidizing the regulation of commercial cannabis due to the inadequacy of fees. This inadequacy can most often be attributed to some combination of premature implementation and/or gross underestimation of the costs to operate and regulate a new program.

Mono County has a relatively small and extremely tight budget, so the potential impact of these regulations on our staff time and County resources is a significant concern. The development of an adequate fee structure that will cover the costs of implementation, maintenance and regulation is critical to ensure that taxpayers do not subsidize these businesses, and that the businesses have confidence in the stability of the fees. The County has contracted with HdL, a leading firm in cannabis policy and research, to assist the County in the development of an adequate fee program.

Will Cannabis businesses be allowed only if a tax measure is passed?

This is unknown. Current Board direction is to align the County’s regulatory approach with a November 2018 tax measure, in an effort to consider all the aspects of cannabis at one time. There has been interest in forwarding a tax measure so the County might help to offset other costs and programs that are expected to be influenced by commercial cannabis (law enforcement, public health), but there is not current direction to tie the approval of County regulations directly to the **success** of a tax measure. The idea of prohibiting commercial cannabis business in the event a tax measure failed has been the subject of discussion, but is not the Board direction at this time.

What is the proposed local tax?

The main discussion about local tax has referenced Inyo County’s ‘range’ of taxation, but no specific numbers have been declared. The development of these regulations and processes will be subject to political dynamics so changes are always possible. The County has contracted with HdL, a leading firm in cannabis policy and research, to assist the County in the development of an adequate fee program.